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RIGHTS OF NATIONS

OR,

The New Law of European States

APPLIED TO THE AFFAIRS OF ITALY.

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The New Law of European States

APPLIED TO THE AFFAIRS OF ITALY.

BY

COUNT MAMIANI,

MINISTER OF PUBLIC INSTRUCTION IN THE KINGDOM OF
SARDINIA.

*Translated from the Italian, and Edited, with the Author's Additions
and Corrections,*

BY ROGER ACTON,

And Dedicated, by Special Permission, to Lord John Russell, M.P.

"When the Common Sense of most shall hold the fretful realms in awe,
And the kindly Earth shall slumber, lapt in universal Law."

THOMSON.

LONDON:

W. JEFFS, 15, BURLINGTON ARCADE,
AND 68, KING'S ROAD, BRIGHTON,
Foreign Bookseller to the Royal Family.

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to regard with affectionate reverence the Whig champion of "civil and religious liberty all the world over."

I am now therefore happy to associate with the great name of an upright English Minister this little portion of work, which I hope some of the Liberal party will approve. Sincerely do I offer him this token of the gratitude and attachment, which are due from all men to the tried friend of justice, freedom, and humanity ; but which are due from all citizens of Great Britain, to the Statesman who has faithfully guided the counsels of our dear country in the way of duty, that is, of safety and honour.

PREFACE AND APOLOGY OF THE EDITOR.

OF course, the merit of this good book is none of mine ; but mine is the responsibility of presenting it here in this shape ; and therefore a word is to be said for myself. The man who ventures, for the first time in his life, to send a volume through the press, feels that he ought to apologise. He is like the suitor or client who brings to some dreadful though not ungentle patron, perhaps on a birthday morning, his gift of service and respect. Such a visitor in print, shyly knocking at the mighty door of the world, deposits the offering which he would present, while standing ready, in the steadfast humility of a fair conscience, to answer and explain. The busy master, to whose multitudinous worship that homage is paid, opens with superb courtesy, and demands to be told this meek dependent's claim, and the occasion of his call. Let me endeavour, in such a situation, to make a proper reply.

May it please the Public, whom I would gladly serve, I am an unworthy member of the Fourth

Estate—a fellow of the reading and writing sort ; and while thus employed, as a literary tide-waiter, in watching the open sea of journalism, the broad, swift current of published thoughts and affairs flowing daily around our domestic life, I have spied out and hailed a goodly foreign vessel, from the cargo of which, borrowed with the owner's consent, I bring you this choice contribution. It is not, as you, my British Public, will observe, a book of Italian politics, which, after the present crisis in the destinies of that fair and famous Peninsula, I dare say you might not care to keep by you ; but it is an Italian book of politics, which you may perhaps esteem worth preserving, until some apter exposition of the same important general principles, by some other writer to come, shall have been provided for you.

These political truths, of which my author, Signor Mamiani, shows the rational ground, are of instant application to the affairs of Italy, and they are here set forth by an Italian. Every student should be more or less aware, without going so far back as to Macchiavelli, how the sciences of public jurisprudence, of legislation, diplomacy, and kindred branches of statesmanship, have been advanced by Italian philosophers. Perhaps, indeed, the French and other celebrated writers upon those subjects in the last century never quite fairly confessed this debt. We might, however, as I am told by the learned, add to such

names as Beccaria and Romagnosi a list including sagacious and diligent minds, illustrious for civil and social wisdom in every province of the Peninsula, during many successive ages. It would be very interesting, I imagine, to remark how those perversions and excesses of the great doctrine of the rights of humanity, which were to issue in the cosmopolitan democracy of the French Revolution, had been avoided in Italy, as well as in England, by the superior prudence and moderation of the national habits of thought. The progress of Italian speculative, no less than that of Italian historical literature, might be reviewed by some competent scholar with much profit; and this would tend, I believe, largely to enhance our estimation of the intellectual achievements of Italy in modern times. Painting, sculpture, and the opera; the Campanile of marble still eloquent in the sky, and the Decameron of humorous fancy laughing in the street below; the poems of Petrarch, Ariosto, and Tasso, moving, musical, magically coloured; the depths and heights of Dante, sweet and stern, are not exactly *all* that she has given to the world. In almost every department of liberal and rationalistic inquiry, there were bold and vigorous thinkers in the South, long previous to Locke, or Voltaire, or Lessing.

It is worth our while to consider here the motives for attending to political science, of which the special theme of international law is but one portion. In

England, we are all used to talking, reading, and writing politics, doing pretty well, in our own familiar home affairs, without much resort to abstract political science ; but not doing so well without it, as it appears to me, when foreign policy is to be discussed. Yet I suppose that our practical common sense, and our staunch hearty patriotism, that inborn spirit of fair play, that native energy of freedom, and that direct Saxon sincerity, mingled with that Norman faculty of discipline and command, which make the English the best self-governing people that ever existed upon earth, would not be impaired by sometimes reverting to political speculation. These virtues certainly would not be in the least degree impaired by a rational appreciation of the essential nature and origin of those highest sanctions which, in the republics of classical antiquity, made the business of the State truly a religious concern. There is indeed small likelihood of the present generation relapsing into that effeminate and shameful neglect of the citizen's duty, which would contract his mind to the petty interests of the shop and the parlour. We are happily now beginning to remember, that it would be a great pity for us all, if English politicians in the nineteenth century were to be reduced to assume a merely materialist and secular tone in dealing with those incalculable interests of public life, which were cherished as something divinely sacred by our forefathers under Elizabeth

when they shattered the Armada, and by those too ardent builders who attempted to raise the Puritan Commonwealth. Better indeed that we should hold the faith of the ancient poet and warrior of Marathon, who adored in the bright Hellenic gods the authors and patrons of the Athenian State,—better that we should hold the faith of Israel, whose intense patriotism derived their national deliverance from alien bondage, and all their annals of Canaan colonization, miraculous warfare, and Jerusalem royalty, from the national Jehovah,—better that we should hold the faith of that enlightened consul, orator and martyr, of the antique Roman Republic, who, in the solemn narrative of his political Vision, tells us that the virtuous soul of Scipio is dwelling in a special Heaven, reserved for the beatitude of the faithful servants of their native country! We must take care, in our own politics, never to permit that exclusion of the divine and eternal element. We must not allow of that desecration or spiritual desiccation of the subjects of political ordinance, which being above all things moral and humane in their nature, and involving the principles of rectitude and benevolence as well as grosser utility, are at least as much as any ecclesiastical forms or institutions, very things of God. No temple or Basilica of any creed or ritual should more veritably be hallowed for us, than the venerable precincts of our Parliament at Westminster, in spite of the triviality of much of its ne-

cessary business, in spite of the huckstering baseness and frivolity which may sometimes have been exhibited there. No amount of dexterity in the leadership of faction or in administrative work can ever win any real and enduring political prosperity for those who would touch irreverently and profanely, for selfish and vulgar purposes, the Ark of our Laws. Devotion, self-sacrifice, resignation of the man or party to whatever the public weal may demand, are the conditions of this high service. The active citizen must not pay his taxes merely, but toil and suffer, or fight and die in cheerful patience. The wisest and best of counsellors, in willing obedience to legal government, must swallow the calumny and the hemlock; the ablest of soldiers must save the shaken Forum by leaping into the gulf. This is the measure of political duty; and if the active procedure of our politics ought, therefore, to be subordinated to a religious obligation exalted as this, so likewise ought a profound philosophic basis to be sought for our opinions and our discussion of political questions; we should devoutly study and resort to the authority of the loftiest science, for the standard of political truth.

Taking this high ground, I hope that so many readers as are painfully struck by the anarchical state of common opinion among us, on all questions of foreign policy, will not refuse to give Count Mamiani's Essay a little of their attention. Everybody who here took notice of the lamentable and ludicrous

confusion of ideas, which was so evident a twelve-month ago, amidst the mean and needless terrors, the vain and indiscriminating anger, excited among us from January to June last, by the outbreak of war in Italy, must have felt how urgently desirable for ourselves is a thorough investigation of the abstract principles of international dealing. Every thoughtful Englishman must have felt ashamed of hearing from a late Foreign Secretary of ours, nearly six years ago, that we had "drifted" into a Russian war. Every one who is anxious to have the influence of Great Britain applied for good, and not for evil, to the settlement of the Continental difficulties, in order that our name may be blessed, and not cursed, by the millions of a future generation in Italy and elsewhere, must feel disposed to test the recent conduct of Lord Derby's ignorant and aimless Cabinet, and more recently the conduct of Lord John Russell, with regard to Piedmont, France, and Austria, but most especially with regard to the Italian people, by the severest logical deductions from the supreme rule of right and wrong. And if it should then appear, that our ordinary conversation through Parliament and the Press had neglected to ascertain the application of any such rule,—that the usual reporters and debaters of foreign affairs had fed us with the mere husks of circumstance, or with the wind and vapours of declamation,—that we had not yet made up our mind, in general, as to what are the justifiable occa-

sions of war, conquest, or revolution,—then I think all of us would agree in welcoming such a book as this which I have translated. If I now also mention, that it is Mr. John Stuart Mill who has unwittingly suggested to me this task, my apology will be very nearly complete; and I may expect that some few of the reflecting class of persons, who listen attentively, as they ought, to whatever is said by the author of the high-minded, if not quite convincing, “*Essay on Liberty*,” will be disposed to examine with solicitude the soundness of Mamiani’s theory. For I happened to read, in “*Fraser’s Magazine*” last December, a “*Few Words on Non-Intervention*,” signed by that just and original thinker, whose words are deservedly of so much weight among us, in which he remarked :

“There seems to be no little need that the whole doctrine of non-interference with foreign nations should be reconsidered, if it can be said to have as yet been considered as a really moral question at all.” And further, having in a sentence or two cleared away certain narrow and sordid misapprehensions with regard to the rightful causes of going to war, he continued: “There are few questions which more require to be taken in hand by ethical and political philosophers, with a view to establishing some rule or criterion, whereby the justifiableness of intervening in the affairs of other countries, and (what is sometimes fully as questionable) the justifiable-

ness of refraining from intervention, may be brought to a definite and rational test."

Now, to do this, is one of the main objects of the treatise *D'un Nuovo Diritto Europeo*, published about four months ago at Turin; an English translation of which, designated by me the "New Law as to the Rights of Nations in Europe," is here offered by me to the reader, and is now humbly submitted to the careful and serious criticism, which the learned author and his grave subject deserve. Perhaps, however, the scope and character of this work are sufficiently delineated in the following comment, which I may transfer from the *Daily News* of January 10th, since I cannot express more exactly my own estimate of its value:—

"We think a translation of Count Mamiani's book would render useful service to the progress of that sublime and beneficent department of study, which defines the obligations of political equity, beyond the conventional rules of civil institution. We mean that true and lofty science of Public Law, which is not restricted to the etiquette of ambassadors, the regulations of prize courts and maritime commissions, or other such incidental arrangements of the state of peace or the state of war—but which aspires to render peace a perpetual blessing and war an antiquated horror, by appealing to the common experience and intelligence of mankind to bow before the supreme authority of Justice. Amongst the nations, indeed, dwelling side by side in legal equality as they do, there is no legislature and there are no tribunals. Their *law*, apart from particular stipulations, consists but of a body of approved notions of the time, or derived from former times; a fluctuating mass of doctrines, precepts, and usages, which can never be determined by judicial interpretation, but which are broadly indicated by the general concurrence of

opinion and example. Yet, with this sanction, it proves by no means inefficacious; and, as Lord Palmerston once said to the Hungarians, 'Opinion is stronger than armies.' The policy of sovereign States *is* really influenced by that which Grotius calls their 'voluntary' law. This is neither more nor less than the received political morality of the age; it may be regarded as a development or interpretation, by general unanimity and habitual practice, of the obligatory natural law. The publicists 'deposing,' says Wheaton, 'as impartial witnesses to the sentiments and usages of civilized nations,' lay down this code of rules for the mutual dealings of independent States. It is just the law of public opinion, determined partly by the precedents of former conduct, and partly by the sentiments of influential minds. Mamiani therefore undertakes to show, that this progressive law of the European nations, 'which is compounded of thought and action, and which events bring forth in an involved, confused, contradictory condition,' has now arrived at a stage when it may be methodized and consolidated, and when its abstract principles may be referred to some intelligible scientific theory. This book of his, entitled 'Theory of a New European Law,' contains a logical explanation of those great changes which the public opinion of the present age has recommended, and which have potentially begun in the conduct of international relations. It is an essay, thoroughly scientific in its design and method, yet popular in its style, and without scholastic abstruseness, upon the new elements which have forced their way into the system of efficient Public Law, since the Congress of Vienna in 1815. It is the sober, careful effort of an observant and meditative politician, who is also an Eclectic philosopher, to gather up the current liberal notions of the age, the popular expressions of common sense, and the loose fragments of public opinion, in order to refer them to one logical theory of National Rights, attested by the double process of severe ratiocination and of illustration by the lessons of modern history. Such being the general aim and range of his treatise, every chapter of it is immediately applicable to the fate of Italy now pending. In his view, the keystone of the modern European system is normally the spontaneous constitution *ad intra*, and the perfect autonomy of each State. He inculcates the individuality, or, as we may say, the corporate personality of each

one of the nations, and insists on the moral existence of each being respected as integral, independent, and unimpaired. The rule of NON-INTERVENTION is the practical result."

I must ask my readers' pardon for reprinting this long extract, which does, however, serve the use of conveying a description, unaltered after several perusals, of the purport of the book now before them. My labour as translator would be very amply recompensed, if this volume were judged by wiser heads than mine to correspond with that description; for then it would not only throw some beneficial light on the present affairs of struggling Italy, but it would, at the same time, aid in supplying that great *desideratum* of political knowledge, with regard to the doctrine of non-intervention, which Mr. John Stuart Mill has so seasonably pointed out. Perhaps I should be going too far in hazarding the conjecture, that Mamiani's doctrine of Individualism and Spontaneity, applied to States and Nations, may prove the complement of those maxims of the inherent personal liberty of each private man, which are more or less entertained by the average of English opinions, and of which Mr. Mill is the most uncompromising logical exponent, commanding our entire assent to his main principles, though we may not all of us accept his distinction of "self-regarding actions." But there is a close analogy, as most even of the ancient publicists have observed, between the ethics of personal intercourse derived from reason, conscience,

nature, utility and experience, or what you will, and the *jus commune gentium*. In one word, the State is a Person, who lives amidst his neighbours in primitive freedom and legal equality, with no civil jurisdiction to control them from above. Morality alone holds good for the communion of nations, as well as for that of simple men. It is very agreeable to the mind sometimes to discover, in the elements of separate branches of study, as here of private and international law, these harmonies, or I should rather say, these sisterly aspects, proving the common parentage of all genuine Principles; which I have ventured elsewhere to call the daughters of one mother, namely of our divine mistress Truth, who is always thus in the family way, and whose children never quarrel or differ; for the right, in any one sphere, is always consistent with all other rights elsewhere.

And I confess, there is, to me, something inexpressibly attractive and inspiring in this *personal* view of the several Nations of mankind, as each a living, feeling, willing and morally responsible creature. I cannot help believing that, in the eye of Absolute and Eternal Wisdom, the consentaneous life of a true political congregation is just as real as the separate existence of the human individual. And surely, if the State be ordained of God (which it may be—which indeed *it is*, as well as the Church), then, for aught we know, “Thou shalt do no murder,” is a commandment which was designed as much to protect

the public or corporate, as the private and particular life. And surely, if the adult and accomplished communities of modern Europe, each one being endowed with its own peculiar character and conscious purpose, each one being the sum and grand result of the full humanity of its own people, would properly regard and behave towards one another, they might sit in a serene company, side by side, just like so many majestic Olympian personages, and like the fraternal deities of this world, conversing together sublimely through all the ages of history ;

“ Self-reverent each, and reverencing each,
Distinct in individuality,
But like each other, even as those who love.”

I do seriously think, that this is not merely an imaginative, but also a reasonable and practical conception of their legitimate manner of existence. Before, however, the salutary, nay essential, sentiment of nationality can thus be perfected, and reconciled with the intimate sympathies and commerce of ideas between the several peoples that grow and thrive under the same common influences of Christian civilization, we must attain to a truer moral standard of political association. By a due appreciation of the constant sources of the patriotic feeling in human nature, we must get rid of that false sentimentalist kind of cosmopolitanism, which is the lean caricature of philanthropy and Christianity ; and also of that other worse kind, the indifferentist or

egotistical spirit of anti-nationality, which likes all or any countries merely as they serve the pleasure of the tourist, or the adventurer's profit,—which is the cosmopolitanism of the bagman and the lounge, of the Bourse and the Spa, and which is somewhat loathsome to a truly liberal mind. The nineteenth century, with all its railroads, steamboats, mails, and telegraphs, facilitating the intercourse of the peoples, does yet emphatically, by that vigorous impulse of the European nationalities which produces most of the Continental wars and revolutions of our day, reject and confute the Socialist Humanitarian fallacy of those who once asserted, that these most natural and necessary divisions were, in the maturity of the world's culture, to disappear. "*Soyons de notre pays*," as the popular Béranger sings, is the expression of a wholesome feeling stronger now than ever, although a twenty-shilling ticket will carry the Cockney 'prentice from London Bridge to the Boulevards; and with the utmost possible frequency and interchange of commodities, courtesies, and Commercial Treaties, there will never be the slightest danger of the moral distinction between the French and the English, as such, becoming effaced.

Civilization, including the improvement and useful exercise of everything human, all the arts, all the morals, all the laws, and all the ideas which really bless mankind, is assuredly a process of divine

ordinance ; but so is the self-conscious growth of complete and capable nations : and the former process cannot, therefore, prove incompatible with the latter. Many communities or nations, like many individual creatures, are destined to perish, or to be absorbed in the larger and better of their kind, without ever coming to maturity. They are henceforth extinct, or live a secondary provincial life, as minors and wards of the mighty States to which they belong. How many different races, Gauls, Romans, Franks, Burgundians, and Goths, have been merged in the French ? how many are incorporated in Spain, in Italy, and in Great Britain ? It is not consanguinity alone that constitutes the unity of a true people ; the pedants of ethnology may say what they will, but the Celts of Cornwall or Carnarvon, and the Scandinavians of Lincolnshire, are permanently one in heart and soul, though to this day with blood unmixed. It is not language alone that makes a nation, whatever the pedants of philology may say ; the Welshman who strikes the harp of Hoel at his Eisteddfod, and I, to whose ears the lay of soft Llewellyn is quite unintelligible, are brotherly Britons together ; the Irishman too is one of us, whenever his incubus of alien Papistry allows him to breathe our social air. The peasantry of Alpine valleys, talking their dear *patois* in the village, are yet, when they speak with the traveller, Germans, Frenchmen, or Italians, sharing the use of those

fine organs of discourse which we study, as part of a liberal education, to acquire. The same breed, therefore, and the same tongue, do not always suffice to form the same nation; although, by the affections of kindred in the one case, and by daily convenience in the other, they work towards that result, and are amongst the most potent elements, in history, in determining the political congregation of mankind. What then *is* the principle of nationality? Our author, Mamiani, replies that it is the spontaneous union of inclinations among a people, the result of many accidental causes combined; it is their consent, however arising, in course of time, to dwell together in the land.*

Now then, for the people of Italy. I ask, was there ever displayed, anywhere on the surface of the globe, a more emphatic popular resolution to this effect of national union, than we have seen in

* We find this fact recorded over and over again, in the Bible, in Homer, and in other ancient narratives. See in Genesis, for example: "And Hamor and Shechem his son communed with the men of their city, saying, These men are peaceable with us; therefore let them dwell in the land, and trade therein; for the land, behold, it is large enough for them; let us take their daughters to us for wives, and let us give them our daughters; only herein will the men consent unto us for to dwell with us, to be one people, if every male among us be circumcised, as they are circumcised. Shall not their cattle and their substance be ours? only let us consent unto them, and they will dwell with us." Decidedly, a spontaneous movement of political annexation, with a view to greater social prosperity; though in that case, as between the Israelites and the Hivites, the attempted union did not succeed.

the Hesperian Peninsula, for the last ten or a dozen years preparing itself and growing to a head, until, in 1859, with the opportunity of Louis Napoleon's military aid, the crisis, which every eye but the blind had long foreseen, naturally and spontaneously arrived? I am not going to inflict upon the readers of this Preface a retrospect of the unintermitting struggle that has gone on so sternly, between the whole manhood of the Italian people on the one side, and the Empire of Austria, with its Archdukes or Viceroys of the several States on the other, ever since that most impudent robbery in 1814, the appropriation of "the Lombardo-Venetian Kingdom," to which the Congress of Vienna, after the crime had been perpetrated, yielded a culpable assent. Nor may I dwell upon the moral regeneration of so many among the Italian youth, wrought by those animating prospects of heroic enterprise, and of the true personal and social dignity of a high and virtuous aim, to be constantly pursued through life, which the writings of the Abbé Gioberti and of Count Cesare Balbo were designed to set before them. Such was the influence of those two books, the "*Primato d'Italia*," and the "*Speranze d'Italia*;" for, if men do naturally become debased and dissipated from beholding the decay and servitude of their native land, the surest way to arouse their drooping souls, and invite them to the task of self-culture, is to show them, within the reach of a possible recovery, its

“Excellence” and its “Hopes.” In this way, Gioberti and Balbo were admirable as moral teachers. Admit that the schemes of Federation which they proposed, one writing as a devout though enlightened minister of the Catholic Church, and the other as a patrician cherishing the courtly and diplomatic traditions of his order, did, at that early period, from 1843 to 1845, fall short of anticipating the more revolutionary, more popular and *Unitary* solution of the Italian problem, which the autumn of 1859 has developed, still, I cannot read those earnest books which kindled such a pure and glorious fire, without the warmest approbation. The political movement of Italy cannot fairly be comprehended, if we are not acquainted with what was being done, or at least with what was thought, felt, and purposed there, for several years *before* the French Revolution of 1848, and even before the amnesties and reforms of Pio Nono at Rome. As the nearness and urgency of the Parisian catastrophe prevented most of us from studying the real causes of the events of 1848 elsewhere, a very mistaken notion has prevailed upon this subject. It has too often been supposed by the careless or uninformed English despisers of the Continent, that it was “the red fool-fury of the Seine” which infected Italy, as it infected some parts of Germany. But the people of the Two Sicilies had successfully demanded their constitutional liberties, many days before Louis Philippe’s

throne was overturned ; the moderate Liberals of Tuscany had been busy, for many months previous, in asserting the freedom of the Press, and in bringing the Grand Ducal government to reason ; the whole Peninsula was alert, and already looking to Charles Albert as the destined leader of a National army against that intolerable Austria, which had malignantly and insidiously molested his own reign, while she had invaded and oppressed the people of every Italian State. This is the truth about 1848 ; and it is certainly not true that the Crusade of Independence was undertaken from a Mazzinian or Democratic inspiration. That mystical Jacobinism, the false prophet's morbid conceit, which has proved capable of suborning penniless assassins in Leicester-square, and perchance of enlisting threescore losel rogues off the quays of Leghorn and Genoa, had no more share in winning the fair battles of Goito, Santa Lucia, and Pastrengo, than it had last year in winning Palestro and San Martino by Italian valour. It was not by the monomaniac zeal of a Republican propaganda, that Radetzky was expelled from the streets and citadel of indomitable Milan ; and it was by a better, a healthier spirit, that the student lads of Pisa were animated, when they stood with Professors Montanelli and Pilla, confronting an Austrian army, to fight the good fight of Curtatone.

The heroism and the errors of 1848 are matters

which belong to past history ; the former, in case of need, we shall see again in a mightier development ; the latter, with Cavour in the royal councils, and Mazzini nowhere, are not likely to be repeated. What have we seen between 1849, the year of the defeat at Novara, and 1859, the year of Magenta and Solferino ? English liberal politicians have done well to keep an eye, and a kind one, upon the happy progress of constitutional government in Piedmont during the successive Ministries of generous D'Azeglio and masterly Cavour. We have all been pleased with that sustained exhibition of public spirit in every kind, that loyalty, that vigour, that practical wisdom, that courageous fidelity on the part of King, Ministers, and people, which have presented, during this elsewhere distressing reactionary decade, the sole promising and comfortable feature of Continental affairs. I do indeed think that, in the winter of 1855, when Victor Emmanuel II., whose stalwart troops, allied with those of France and England, had just won for us the bridge of the Tchernaya, came here to London, and received the thanks of our Protestant Christianity for the ample liberty of conscience he had bestowed upon the Waldenses, we all felt that not only the claims of Italy, but the most cherished traditions of Europe in the past, and its most cherished hopes for the future, were represented by the Sardinian State. I think, when we cheered the honest Catholic Prince, who had braved the Papal

anathema to maintain the laws of his country; and when our good folks detected the lines of recent sorrow in that brown face of the bereaved son, husband, and brother, whose family affliction was interpreted by the cruel insolence of the Jesuits as a curse on their opponent; I think, when his presence was hailed at Guildhall, and when the heartiest English acclamations wafted him away at Folkestone, then the King of Constitutional Italy, one of the two or three *unperjured* monarchs then extant in the world, left so favourable an impression here, that it is unnecessary to eulogize his reign. Perhaps the age of chivalry is not quite gone, after all; perhaps the old romantic love of royalty is not yet extinct, when you can get a manly King, a soldier if not a statesman, or a womanly Queen, all that accomplished womanhood should be, instead of a lay figure or worse, to wear the emblematic crown. Perhaps the bones of those brave princes, our own comrades in arms, of the staunch and ancient lineage of Savoy, are not destined to be scattered and defiled, like those of the Capets, the Valois and Bourbons at St. Denis, by the iconoclastic rage of a people thus madly stripping itself of the robes of its peculiar history. There they lie, interred far above the house-tops of Turin, beneath that marvellous dome of Superga, whence the pilgrim may gaze upon half the plain of Northern Italy beneath, spread green and sparkling with rivers, a real map framed all round with the Alpine peaks and snows! It is a noble


mausoleum for a worthy race, who have, upon the whole, well borne in mind that *noblesse oblige*, and *majesté* far more; for which merit the *Rè Galantuomo* is about to obtain his promotion, and a faithful dynasty will have its reward in the faithful attachment and gratitude of the great Italian nation. Ask the Piedmontese, who have experienced this! What would some emperors give, but once to taste the joy of being thus sincerely honoured by the million! Ask the Lombards, Tuscans, and Romagnols, why they choose their King!

We, in England, can readily sympathize with the efforts of a foreign people to obtain civil freedom, constitutional guarantees for internal good government, or legal securities against the encroachments of the priesthood. All this is of the very essence of our own happy and glorious experience. But we, for eight centuries past safe in our islands against the foreign conqueror, can hardly know what it is for a nation, invaded and subjugated by alien arms, to suffer that wretched sense of humiliation, and to nurse up for ages that desperate resentment, which have been so long tormenting every Italian heart. Last year we had an instance of this, when those kindly and bountiful persons, who with Lord Shaftesbury were foremost in welcoming and in relieving the Neapolitan State Prisoners, escaped from the clutches of a domestic tyranny, were yet unable at once to appreciate the War of Independence in which Piedmont, followed by the whole

people of Northern and Central Italy, had dared again to embark. But it is for the deliverance of the Italian nationality, and not for the attainment of any particular franchises, that the people of every province are so eager to confront the vast military power of Austria in the decisive field. It is for this that they have striven, in each of their capital cities, to extort from the Austrian deputy-rulers, kings, popes, and dukes, a share of political power. For this, many virtuous citizens have expired on the gibbet, or languished to death in the sunless dungeon, as we may read in the Italian "Book of Martyrs," in this our nineteenth century; and I could a tale unfold, how more than one austere, uncomplaining exile, still nourishing in his noble heart this great unselfish hope, has descended from his starving garret in London to pine amidst the ribaldry of a parish workhouse, or to fill his squalid grave in a dank churchyard behind our heedless streets.

These very days, in which I am writing, are indeed momentous for Italy and for all the world,—birth-days, let us hope, of those inestimable general principles, which the case of Italy demands. All the rapid movements and changes of the last twelve-month have, both in our newspapers and in our Houses of Parliament, been enough discussed. The unhappy compromise of Villafranca, rash, presumptuous and ill-advised as it was, (but *not* treacherous, if it was dictated by an insufficient apprehension

of the depth and breadth of the national sentiment in Italy,) has been condemned, perhaps more severely than its author's intention, as shown by his conduct since then, deserved. The irreconcilable breach between the Lorraine princes and the people of Tuscany has become more evident than to a foreign eye, before last Midsummer, it appeared. The astonishing unanimity, consistency, and disciplined perseverance of the four million Central Italians, have earned the sympathy of Europe ; and all the diplomatic influence of the British Cabinet has been exerted, with success, to prevent the petty despots, whom those populations had rejected, from being forced back upon them either by an Austrian or a French intervention. It will probably depend on the events of the next few days, whether or not the will of the people is to run its rightful course ; and whether the King of Sardinia is to be exposed *alone* to a second Austrian attack, upon his acceptance of that great united Italian kingdom, which it appears now both practicable and advantageous to establish. The spontaneous and unqualified suffrages, firstly of the Deputies, and secondly of the Population, must and shall prevail ; and although the Emperor of the French thinks proper to disavow, somewhat gratuitously, as we must think, any responsibility for the annexation of Tuscany, certain scruples will yet prevent him from spoiling that arrangement. In the mean time, we have obtained, in M. Thouvenel's despatch of



January 31st, a complete and explicit acknowledgment of the negative principle, disallowing the intervention of foreign force ; and, thus left secure of her own independent action, *Italia farà da se*.

Whatever may be the wars, revolutions, or reactions yet to come, I must, as an Englishman, declare that Lord John Russell's correspondence presented this session to the House of Commons affords us thus far abundant cause for thankful satisfaction of the public conscience, and for the honest pride of a great national duty well and judiciously performed. We have heard that beloved and sacred Lady—sacred to us, because she personifies our sacred national communion, so that not *her* but *our* majesty invests her brow—solemnly and repeatedly, from her Throne, announce the true policy, for which the British Government on former occasions had contended.* ‘ I have made known,” she said, “ that I should stead-

* I refer to Note A at the end of this volume, for an official list of the precedents, and a prophecy of the future triumphs, of this principle. Observe what the Duke of Wellington, in reply to the taunt of being “ a protector of Jacobins all over the world,” said to Czar Alexander and to Kaiser Franz, in a certain memorable interview on the 27th November, 1822, at the Congress of Verona. These were his words to their Imperial Majesties : “ All for which England pleaded was the right of nations to set up over themselves whatever form of government they thought best, and to be left to manage their own affairs so long as they left other nations to manage theirs.” Canning himself might have said it more elegantly, but not more emphatically. Nearly forty years of our history since then have ripened and confirmed this maxim of the foreign policy of Great Britain.

fastly maintain the principle that no foreign force should be employed to impose upon the people of Italy any particular government or constitution ;” and again she said, “ Whether in Congress or in separate negotiation, I shall endeavour to obtain for the people of Italy freedom from foreign interference by force of arms in their internal concerns.” And with Lord Palmerston, Lord John Russell, and Mr. Gladstone for her advisers, the Queen will keep her word. And if need be, we will help her !

It remains for me here to introduce my author to his English readers, though many of them must have long known him by his reputation, literary and political ; one of the fairest Italian reputations of our time. Terenzio Mamiani, the last direct descendant of the ancient house Della Rovere, famous for certain princes and pontiffs of no small figure in history, was born about sixty years ago at Pesaro, in the Romagna, which, at the time of his childhood, was included in that Kingdom of Italy constructed by the wild genius of the first Napoleon—a kingdom internally prosperous and popular, in spite of its provisional dependence on the French Empire ; a kingdom which might, in more peaceable and righteous times, and with a less arbitrary patron, have become the free, strong, national State which the Peninsula required. In the insurrection of the Roman Legations in 1831, Mamiani played a leading part, and he was the only member of the Provisional Government who refused

to sign the Capitulation of Ancona. He was one of the thirty-eight persons specially exempted from the amnesty afterwards proclaimed ; and, having sailed, with General Zucchi and some others, Romans and Modenese, from a port on the Adriatic coast, the party were captured by an Austrian cruiser, and suffered nine months' captivity at Venice. After this, Mamiani resided about fifteen years at Paris, eminent in a brilliant circle of Italian scholars and philosophers, amidst whom he composed several profound works of mental and moral science, as well as of literary criticism ; besides some poetry, lyrical and contemplative, which possesses the merit at least of a classical purity of expression, with much refinement and elevation of feeling. When Pius IX. proclaimed an amnesty, Mamiani was invited to return to the Roman States, but he would not do so until that clause, which prescribed to every political exile, on returning, a formal recantation of previous offences, had been modified for his unconditional resumption of the Roman citizenship. A parliamentary constitution was established, and Mamiani was President of the Council of Ministers. I need only refer to Farini's History, which Mr. Gladstone has translated, for an account of Mamiani's conduct in office, both in the first Cabinet, and in another subsequently formed. Consistently did he maintain, throughout that year 1848, the spotless honour and integrity of a good and wise, though not a crafty statesman. Even after

the execrable murder of Count Rossi, and those acts of mob violence in November, which supplied the faithless and frightened Pope with a pretext for abandoning his subjects, it was Mamiani's faithful endeavour to preserve constitutional government, to reconstruct the Italian League against Austria, and so to retrieve in good order the liberties of the Peninsula. When the French intervention, proposed by Cavaignac, was announced, and decreed by the Assembly at Paris, in the first days of December, it was resisted by Mamiani at Rome, with a solemn protest addressed to all the Governments of Europe. That unprincipled French intervention came, notwithstanding, in the spring of 1849, concurring with the second Piedmontese defeat at Novara, and with the Austrian reconquest of Central Italy, to destroy the last chance of saving the independence of Rome. Two months of Mazzini's prophetic dictatorship, made illustrious by the heroism of Garibaldi and his comrades, ended, with a siege which has indelibly stained the arms of France, the brief and mournful course of Roman freedom ; and the fall of Sicily and of Venice soon crushed out, for that time, the hopes of Italy. But since the disastrous year 1849, Count Mamiani, like Farini, has pursued a career of honourable usefulness in Piedmont. He has founded the Academy of Genoa, and supplied it with valuable lectures and dissertations ; he has contributed much to the *Rivista Contemporanea* of Turin ; and he has

latterly discharged the Professorship of Modern History, and another department, in the University of Turin. He has sat in the Chamber of Deputies, as the member for Genoa at first, and afterwards for a lesser constituency; so that in those frank and high-spirited debates, which have now and then broken the dull silence of Continental despotism, the weighty and polished eloquence of Signor Mamiani has been heard in support of the national and progressive policy of the Sardinian Government, steering so boldly and so wisely, between the rocks of the Clerical and Retrograde faction on the one hand, and the whirlpool of demagogue temerity on the other. Last January, when the more favourable turn of Italian affairs enabled Count Cavour to resume the direction of the King's councils, he requested Mamiani to undertake the Ministry of Public Instruction. A circular, favouring the largest enjoyment of intellectual liberty in all the schools and colleges placed under his control, was the earliest official performance of the new Minister, whose care will doubtless foster and mature that fresh development of the Italian mind, in every branch of literary and scientific culture, which, as the fruit of political emancipation, we may expect to enrich the world.

Before I commit to the English public this translation of his work, I wish to say, that I have simply tried, with my best diligence, to convey his exact meaning, though I could not hope to preserve the

easy grace, the propriety, and the rhetorical beauties of his style. If some of the following pages seem to be deficient in these respects, which I confess they are, I only beg that the fault may be ascribed not to him, but to me. I asked him to let me try to do my best with his book. He has enlarged and altered it for this English edition, adapting several of its chapters to the more recent aspects of the great Italian controversy. One licence I have taken, in cutting off and relegating to Note B, for reasons there stated, a few words of epilogue at the end of the book, which referred to the particular circumstances when the original work was published ; and for which I have substituted an indifferently poetical *Envoi*, imitating as I could a not unhandsome fashion of the quaint old scribes, who would launch upon its errand, with a devout song, their Essay of a lofty theme.

There are two phrases, farther on, which need excuse or explanation. Purists may carp at "the own country," that phrase being used abstractedly, and without a personal possessive pronoun ; but the solecism was invented to help out the sense ; for it seemed that a stronger expression was needed than "the native country," to signify the country which we own, and which owns us. Again, to avoid employing too often the Greek word "autonomy," which has an exotic, if not a pedantic air in English company, I have chosen "self-rule." This must here be taken to mean nothing like a democratic form of internal

government, but simply the independent conduct of the State, as a whole ; for as a steamboat, of which the engine is a part, and a horse, propelled by the nerves and muscles which are a part of him, possess the attribute of self-motion, so Russia or France, each controlled by an Emperor who is a most prominent feature of the State, may for international purposes be called self-ruling, although the trunk and hull of the body politic be helplessly subservient. In this outside point of view, a prince, or any other governor, whether hereditary or elective, responsible or despotic, should be regarded not as an extraneous agent operating upon the mass of the nation, but as an organic member of it ; having, in the case of royalty, either germinated from a privileged family within the nation, or having been grafted into it by popular consent, and with the vital sap of mutual loyalty having consummated this adoptive union. Such appears to be the characteristic origin of kingship, and the true doctrine of legitimate monarchy.

It is not, however, incumbent upon the translator of a book like this to supply definitions ; and perhaps I have insisted too long, and with too little of the conventional reserve or affected timidity of a preface, on all that is here advanced. But those who might censure me will have the charity to believe, that this forwardness on my own insignificant part arises from personal convictions so intense that they will have utterance, even at the risk of

being deemed obtrusive. It is high time for Mamiani to come in and speak for himself; and I beg pardon of him, and of you, friendly readers, for keeping him so long on the threshold of your door.

London, Ides of March, 1860.

CONTENTS.

CHAPTER I.		PAGE
REASONS FOR THIS BOOK		1
CHAPTER II.		
THE INWARD AND OUTWARD SELF-RULE OF STATES .		12
CHAPTER III.		
THE "OWN COUNTRY"		33
CHAPTER IV.		
NATIONALITY		39
CHAPTER V.		
SOVEREIGNTY		57
CHAPTER VI.		
CONGRESSES AND TREATIES		73
CHAPTER VII.		
THE NORMAL PRINCIPLES OF A CONGRESS . . .		95
CHAPTER VIII.		
TWO LEADING MAXIMS OF THE VIENNA CONGRESS .		113
CHAPTER IX.		
THE RIGHT OF INTERVENTION		135
CHAPTER X.		
EQUILIBRIUM OF THE STATES OF EUROPE . . .		148

CHAPTER XI.		PAGE
THE PRINCIPLE OF INTERVENTION AGAIN		164
CHAPTER XII.		
ARE THERE EXCEPTIONS TO NON-INTERVENTION ? .		177
CHAPTER XIII.		
ARMED INTERVENTION FOR THE SAKE OF RELIGION		198
CHAPTER XIV.		
CHURCH AND STATE		231
CHAPTER XV.		
IDEAL OR ARCHETYPE OF INTERNATIONAL LAW . .		256
CHAPTER XVI.		
FAITH OF TREATIES, AND THEIR PERFECTION . .		273
CHAPTER XVII.		
HISTORY OF THE IDEA OF LAW		300
CHAPTER XVIII.		
THE LATE PARIS CONGRESS, AND A CONGRESS WANTED		316
CHAPTER XIX.		
PRINCIPAL CONCLUSIONS		341
APPENDIX.		
NOTE A.—PRECEDENTS AND PROPHECY		357
„ B.—THE EMPEROR NAPOLEON, OR EMPEROR		
„ OF THE FRENCH		363
„ C.—VOLUNTARY SEPARATION OF PROVINCES .		369
„ D.—ENGLISH POETS AND ITALIAN POLITICS .		372
„ E.—THE AUTHOR'S ADDRESS TO THE PEOPLE		
„ OF THE TWO SICILIES		374

RIGHTS OF NATIONS;

OR,

THE NEW LAW OF EUROPEAN POLICY.

CHAPTER I.

REASONS FOR THIS BOOK.

THE law of civil jurisdiction for each people invests the letter of its positive and particular statutes with sufficient authority to answer the ordinary purposes of justice, to settle doubtful points, and appease disputes respecting the interests and duties of every private citizen. Lawyers hence, by no other skill than that of promptly remembering, acutely discriminating, aptly and sagaciously interpreting, may gain repute and worldly eminence. But the law of nations, on the contrary, requires not unfrequently the discussion of abstract truths. For it is independent of the authority of such statutes, and superior to them; it has an immediate connexion with the law of nature, which is wholly rational and speculative; it must often be traced back to the very foundations of human society, and often, to

solve the doubts and settle the differences which arise between one people and another, no better way can be found than to cite the great maxims of equitable reason, deduced and explained by science.

We may all remember the fact, one truly glorious for literature, that the book of Hugo Grotius introduced into the councils of monarchs and into their battle-fields some precepts or maxims of justice and humanity which, before his time, though confessedly felt in the inmost consciences of men, were overborne and, as it were, nullified sometimes by the blind vehemence of passion, and sometimes by the sophistry of antiquated and erroneous doctrines. Gustavus Adolphus, wiser in this than Alexander, took the treatise *De Jure Belli et Pacis*, instead of the poems of Homer, to lay beneath his nightly pillow.

But the present age is one which does not like reading a theory or a treatise, and such things are treated by diplomatists with superb derision. A presumptuous and obstinate empiricism governs our international relations, and those who trouble their minds with such vain and fruitless speculations are contemptuously pitied. Now is it right, is it sensible, to let this habit continue? It seems to us that this is not right, and that we are forbidden by the truest practical wisdom to despise so much the aid of science. True it is that the philosophy of public law sometimes appears discordant with itself, and that its standard is hoisted by various and antago-

nistic schools. The Utilitarians, for instance, who rally around Bentham's leadership, fix the principle, the basis, and the reason of all law in the greatest happiness of the greatest number ; certain Platonists, meanwhile, looking steadfastly to the universal and immutable Idea of Good, care not for utility, and do not hesitate to cry, Perish the world, but let justice be done ! Savigny, on the other hand, with his learned disciples about him, proclaims the perennial and absolute authority of historical Legitimacy.

We do not deny that there is all this conflict ; nay, we are ready to confess that, with some change of terms and outward aspect, it seems likely to perpetuate itself in academies and professorial chairs. But happily it comes to pass that educated and well-informed men, in every civilized country, are wont to gather from the theories of philosophical jurists those portions only which are evidently and strikingly reasonable, and which are in exact conformity with the common suggestions of an universal intuition in regard to morality and justice. From these sources a kind of popular science is, drop by drop, as it were, distilled, which is slowly but surely augmented, until our observation and judgment of all the concerns of social life are gradually refined by it, and it may fitly be referred to as consisting of common sense, clarified and applied. Its application, however, is yet inadequate and disconnected. It is contained in a multitude of


aphorisms, rather than in any well-arranged system of ideas and doctrines, or any strict and coherent series of antecedent and consequent propositions. To construct such a work of reflection and reasoning is a task that obviously demands the labour and the care of a learned and speculative mind.

It may therefore be assumed that, in the amendment and progress of international law, there is a function of great advantage, or rather one of necessity, to be performed by science; but it is a function to be modestly discharged, and its results should perpetually be collated with the maxims of that which we have called the popular science of evidently reasonable rules. In no mental occupation, more emphatically than in this, do we find the convenience of that Socratic art which leads philosophy to descend from the heavens and to converse in domestic familiarity with mankind.

With such companionship and guidance we propose to write an Essay upon those most serious errors in which the existing European law is still involved, and also upon those essential and directing principles from which its correction and better re-establishment may proceed.

Philosophy can achieve no task more excellent in dignity or profit, than this; since the errors of the law of nations are apt to propagate themselves by their disastrous effects throughout the length of ages, and the fate of nations is too frequently

decided by their prevalence. It does little harm if metaphysicians and literary scholars dispute among themselves, but the disagreements and the aberrations of publicists inflict great mischief on mankind. It has been remarked, indeed, that the fine discernment of enlightened men does pick out from scientific doctrine its sure and solid portion, but creates and methodizes none. Perhaps, it has not been without some contrivance of those who would favour a state of political servitude, that such increasing indifference and discredit have been shown among Courts and Cabinets regarding the profound speculations of international law; perhaps those persons were highly pleased that the subject and practice of that law should be kept as *arcana imperii*. And indeed, what else is the writer doing, who discusses and promulgates these matters, than awakening in the peoples a lively consciousness of their own natural and reciprocal rights? But we may notice, on the other hand, that whenever it has suited the convenience of the persons we allude to, they have never refrained from shielding themselves behind the authority of eminent thinkers and writers. Until the time of Grotius, there were many who affirmed with great reason that a whole people never does voluntarily cast itself, for a perpetuity, beneath the arbitrary sway of a single man and invest him with a full, absolute, irrevocable sovereignty; and that even if a people did so, it would do so illegally.



Grotius thought the contrary, and adduced, as his chief proof of it, that it is lawful for any man to make himself servile and the slave of one of his fellow-creatures. He thus defended a bad opinion by alleging another which was worse. Nobody in our times, I suppose, would maintain that one man can lawfully convert himself into the slave of another; indeed, all the jurists would now agree to declare a contract of that species essentially illegal and void; as they do, for example, with respect to the negro slave-trade. It is one of those truths which have passed into the domain of common knowledge. Notwithstanding this, monarchs have gone on citing that doctrine of Grotius, and esteeming themselves the legitimate possessors of an absolute and entirely unlimited sovereignty. So we have a complete system of public law founded upon a false supposition. Again, when the professorial chairs of Germany bestowed imprudent applause on the promoters and advocates of the Historic system of law, courtiers applauded it still more, and the Austrian Chancery itself does not omit frequently and very eagerly to adduce its obligation. Other examples we need not mention.

It is not, then, a blind empiricism, it is not a flight of transcendental metaphysics, that the welfare of civilization requires, but a science of public law which should be modest, positive, and patent, such as we have already defined. This will be acceptable and useful to the peoples, as it will be obnoxious to all

those who fatten and who flourish upon common errors and prejudices.

From these premises it ensues that the things we are going to remark will not be intrinsically novel. Indeed, how could the exorbitancies and the falsities of the present condition of European law have been able to lie hidden from the great light of civilization in these our days, and from that vivid perception of justice and humanity which is now possessed by all liberal minds? It is only wanting that some one should display, as in a mirror, and by a well-defined method, all the features of this contemplation. A work perhaps not very difficult, but one of immense advantage, is this; for we daily see how the truth is mistaken,—by scholars, through the influence of their ambition and their excessive addiction to their systems,—by diplomatists, for the sake of their interests,—by the multitude, because of their inability to express in a logical form their instinctive thoughts and sentiments,—and by literary men in general, because they cannot quit the beaten path.

But somebody may here stop us and say: It is certainly good that the chief blunders existing in the modern law of Europe should be discovered and explained, so long as it is not thereby intended to invalidate and deny in a mass all the treaties, by means of which general order is now upheld and peace is preserved between the potentates. To do this would be plunging mankind into anarchy and ruin. And

let the reformer consider, that the majority of men are disposed to prefer quietude in error to the perils of truth.

We reply to this. Treaties do surely impose great moral obligation. In general, it should be deemed that, to change them, or merely to modify them, it is needful to have the concurrence and accord of the same wills by which they were framed and sanctioned ; and moreover, that every change or emendation of them should be accomplished with the least possible damage to the contrary interests, and that such moderating provisions as are suitable should not be omitted. We may add, that fidelity to treaties ought to remain entire, even when substantial changes have since occurred in the internal constitution of the States which made them, and that, generally speaking, it is not dependent on political revolutions. Even wars between these States, although they break up those particular conventions for the abolition or in vindication of which arms were taken up, leave the other conventions intact.

We should expect even the Pharisees of legality to be satisfied with these admissions. But from treaties, of whatever sort, there emanates an intrinsic obligation, and another, which we will call an extrinsic obligation. The latter results from the bare fact of their existence ; *dura lex sed lex* ; so that a treaty may eventually become grievous and hurtful

to the people which has once assented to it, or may become more and more ill-suited to the new condition of that people, and nevertheless it behoves to be respected, generally speaking, on account of the faith which has been pledged to it; considering that the jealous observance of express or tacit conventions daily bestows upon every civilized nation incalculable blessings, and that if loyalty and reciprocal good faith were to depart, the nations would live, as it were, in outlawry, and the constant interchange of benefits would become almost impracticable between them. All this, however, we state within certain limits, according to the quality of the damage and injury which a people sustains.

The intrinsic obligation of a treaty proceeds from its substantial equity and reasonableness, and from its exact conformity with all right principles; wherefore, though the treaty were taken away, the obligation would not cease. Now, if we suppose that this accordance and conformity be wanting, pernicious occasions of war and revolution will be sure to arise from it; and we learn from history that the faith of treaties does not hold whenever the rights and interests of the parties are excessively outraged. But if we suppose the contrary case, the hatreds and dissensions that may arise will soon be appeased, and though a hundred sophistical writers may impugn the obligation, their invective will be nothing more than a vain literary gabble, merely brushing the

surface of the community, never stirring the tempest in its bosom.

Therefore we say, that those who invite the attention of the wise and good to the observance of the true principles of public law, are teaching the only efficacious mode of establishing friendship between the peoples and securing the permanent order and tranquillity of States.

Teachers like these do not exclaim, Let us madly tear up existing treaties, let us brandish our weapons, relying on their determination, and let Mars be the arbiter and legislator of the world ! They do but inculcate the necessity, which is really most urgent, that powerful personages on earth should unite together with a view to revising and correcting, according to justice, many of the compacts and conventions that exist. If the impatience of the peoples cannot always bear to await the slow and difficult offices of diplomacy, or if the frowardness and ambition of some rulers prohibit and hinder that work, it is not upon such writers as these that the blame should fall. But unfortunately, the madness of men sometimes makes Truth appear scandalous in their sight ; wherefore, by the very lips of Truth the sentence was pronounced, " I came not to bring peace amongst you, but a sword."

The fabric of law is ever one of a mingled texture, made up of thought and action, and as produced by facts, it comes out in an involved, confused, and contra-

dictory shape. By the ideal contemplation of law, this fabric is developed, cleared up, and made to harmonize with itself. Speculation and History, therefore, are the twin eyes of juridical philosophy. We shall now proceed *pari passu* with both these constituent elements of our inquiry, but sparingly and briefly employed, and only to the extent which our limited and special discussion needs. The mind may either descend, from a distinct and orderly conception of the idea, to its illustration by the facts; or else, it may on the other hand discern, from the essential nature of the facts, the ideal principles latent and implied therein. We shall follow the first of these two methods, and now, without more preamble, attack our subject.

CHAPTER II.

THE INWARD AND OUTWARD SELF-RULE OF STATES.

THE proper subject of international law is the determination of the social and political bearings between State and State, and the moral and juridical rule by which the value of those mutual relations is to be estimated, and their normal limit and character to be assigned.

But they must be of a kind such as the intrinsic nature of the State itself may be, since every relation which subsists between two things must partake of the nature of the things so related. We must therefore know, in the first place, what is the fundamental existence common to all States, that we may rightly comprehend their substantial and constant relations. So far is it from being possible, as some writers pretend, to treat of international law, severing it altogether from the other parts of public law,—we mean, from the knowledge at least of the essential form and conditions of the inner life of a people. On the other hand, what is the system of law between the nations, regarded as a whole, but the perpetual ordinance to which the great universal commonwealth of the human race voluntarily sub-

mits itself? And the individual members of that Commonwealth are States. Now, we know tolerably well what an individual man is, in general, because he is born by nature always essentially the same kind of creature. But everybody may not so clearly know what a State is, in kind, since that is partly an artificial and human structure.

We say now, that the State is a certain congregation of families, which provides by laws and tribunals for its own welfare and for its own protection, so that the ends of Society in general, and the peculiar ends for which this congregation exists, may be competently fulfilled.

This is how we define any collection of men to which, as a whole, the denomination of a State can be ascribed; though, when we are speaking of civilized nations, the idea of Society should be specified more distinctly and expressed in some words equivalent to these: so that the ends for which Society exists may be competently fulfilled, and the progressive perfectibility of private men and of the public may be continued possible. For a State, in which the progressive perfectibility of the common existence is prevented, is one quite uncivilized, and even in Europe we may perhaps find some deplorable examples of this. In all the ancient definitions of the State, whether general or special, this idea of regarding the social end as synonymous with a continual progress towards the perfection of individuals and of

the community, appears to be wanting ; for such was the effect of the condition of the ideas and beliefs of our forefathers. We are glad now to be able thus incidentally to point out this great difference between the doctrines of the present and of former ages, because it will show even to the blindest, that in science, as well as in the affairs and outer life of the peoples, and not less so in their inner life, there exists a ceaseless and irresistible faculty of amendment and innovation.

The State, then, constitutes a moral person, or an entire individual of the great universal commonwealth ; and it is distinguished and differentiated from the others its peers, by virtue of this, that the families of which it is composed are those intending, beneath a certain zenith and within certain frontiers of the soil, to attain together by their assiduous co-operation the ultimate degree of social conjunction and reciprocity, according as they may be affected by the special circumstances of their land, of their race, and by other particular contingencies.

Therefore, the State does not subsist solely by the contiguity of lands and dwellings, but through a certain conjunction or unity of minds and dispositions. The hostile army, which in defiance of every right invades a country and encamps among its cultivators and possessors, certainly does not compose with them one State ; two peoples are there mingled, but not conjoined. The law and protection of the

State are indeed moral agents, though sometimes borrowing material force to aid and supplement their own efficacy and proper sanction ; they principally impress and constrain the conscience, or rather the understandings and hearts of men. The State therefore, being based upon laws, is based upon a certain concurrence of thoughts and wills ; its founding is essentially a spontaneous, and not a violent act. And though, within the State, erring thoughts and recalcitrant wills may be found, they exist but partially there ; and if they are multiplied beyond a certain measure, they threaten to tear the State asunder with anarchy and to annul it.

Again, the State is a system of means subordinated together to the above-mentioned end ; and those means being conscious of their task and animated by it, and each partaking likewise of the end of their operation, in case they should display wills and intentions always contrary, the end could never be attainable.

We have already seen that, for civilized States, the end of their being is a competent and progressive realization of human perfectibility. But this, without willing and harmonious activity, becomes quite impossible, since our nature is such that, under repression and constraint, it refuses to develop its capacities energetically and with alacrity.

I. From this we conclude that the State is always informed by a certain intrinsic autonomy (or self-rule)—

that is, by a constant and common will of all those congregated therein to exist in a certain social union distinct from all others, and by their own forces to fulfil sufficiently the ends of association, universal and particular. This amounts to saying that it is not enough for a State to have a material unity of habitations and persons, but that it is also requisite for it to have a certain moral unity. It is true that in most of the Oriental monarchies the will of the State appears to consist merely of the arbitrary power of one man. But it should be remembered that, notwithstanding this arbitrary power, the wills of his subjects at least concur in meaning to keep themselves the citizens of that particular kingdom and to compose that social union, separate and distinct from all others, and hence concur in desiring the establishment of such means as are needful to attain the end of their union. Certainly, we think, where this common consciousness of the State, and the respective unity of thoughts and sentiments, are totally deficient, the word State can hardly be applied. For the laws, tribunals, arms, religion, and similar institutions, although they frame the social communion, do not of themselves suffice radically to distinguish one such communion from any other ; but the State, besides being, in its kind, a social congregation, is moreover a special and distinct one ; it is morally, a complete and singular person ; in short, it is a perfect individual of the universal common-

wealth ; one which cannot be confounded with others ; one whose individuality, if it were all composed of the violent arbitrary domination of a single man, would have an accidental and not a permanent character. And this is the case which actually happened amidst the feudal wars of the Middle Ages, when States appeared and vanished, when the populations were bartered to and fro by one lord and another, and when nobody knew for certain to what political congregation he belonged. For this cause, in those times, as it is impossible for man to live without a country of his own, and as he has a perpetual tendency to create for himself some bond of social union, everybody then set his mind upon his own communal neighbourhood, looking not beyond it, and it was in the commune that the concourse of wills and the inward autonomy took place.

II. The State, moreover, with respect to all the others its like divided from it, is free and completely independent of them all ; and this is what we call its outward autonomy.

Each private man in a commonwealth acknowledges above himself an authority which governs and judges and to which he confesses himself civilly inferior. But States have no power above themselves except the moral and invisible power of Law, as it is common to the whole human race, and as our nature requires. The characteristic difference between

the qualities of the two different kinds of Law is this: that the one is based altogether on an equality of the individuals to which it applies, and the other upon a civil hierarchy; the latter is one which judges, punishes, and compels; the former is one which involves none of these faculties. This is why the law of nations can never be transformed into civil law, as the author of the *Esprit des Lois* imagined. One people is indeed less rich and less ingenious, or less powerful, educated, and religious, than another; and in these respects there may be as great a disproportion between them as there is between the citizens of the same republic. But all this does not alter their juridical equality, for it does not engender, on the one side, a natural right to command, or, on the other side, an obligation to obey.

We do not here inquire whether a country which has become tributary, or which is in any manner subject to external authority, can or cannot receive the appellation of a State. Enough for us now to say that, by our definition, and from the very nature of the subject, such a name could only be extended to it in a very large sense, and not with strict propriety; for the word State, taken in the abstract, expresses a complete society, self-sufficient for its proper ends, and by itself providing for itself therein. At any rate, an autonomy, both inward and outward, was decidedly its primitive and original form;

since at first existed certain congregations of families and tribes ; then some of these remained free, whilst others submitted to them. It is plain that, if independence be not inherent originally and naturally in the State, that privilege must be denied to all the States which exist in the world, and so to those which hold other States in subjection to themselves. For what claim can they prefer to their own right of living exempt from all foreign subjection, except their essential and original autonomy ? Will it be said for them, that their independence proceeds from their having been able manfully to defend it, and therefore that it has become a juridical truth merely in consequence of that event ? But surely, before they had defended it, they were in legitimate possession of their liberty ; and woful indeed would be the Law, if its existence, at least in principle, as a moral power and virtue, were to be dependent on the employment of Force !

Be it then regarded as a manifest truth that every State whatsoever, in its normal essence, is a perfect and completely independent one ; that is to say, that it enjoys not only an inward, but also its outward autonomy. Its greatness or smallness, its being military or unwarlike, wealthy or poor, can neither augment nor diminish its independence in the sight of justice and reason. The free city of Hamburg is self-ruling as well as the Empire of Russia.

Which being recognised and settled, we shall infer from it this : That it is the very first principle and axiom of International Law, that no one may under any pretext arrogate to himself the faculty of offending or lessening the inward and outward autonomy or self-rule of any State at all, so long as this latter does not provoke the other to assail it in a just war ; and that even in this case it is lawful but to assume temporary occupation of its territory and dominion over its people, within the limits of what belongs to one's own defence and an equitable compensation for the injuries one has endured.

Still we have now to ask, whether a State may of its own discretionary power and wish give itself into the custody and tutelage of another, and accept the lordship over itself of that other, or whether the doing of this, in any mode or upon any occasion, be interdicted by reason and by right ?

A distinction should first be made, which is of extreme importance : namely, that it is one thing for a people to merge its own autonomy into another which is larger and better, uniting itself entirely with one or more neighbouring and friendly peoples ; and it is quite another thing for a people to lose its autonomy and to cancel it altogether, ceasing to govern itself, and putting itself under the arbitrary domination of a foreign race.

To us it does not appear doubtful that any congregation of men may freely realize the former of

these propositions, seeing that the State, by means of that unification, extends and strengthens its own liberty and independence, instead of reducing it. In this manner it was that the patriarchal families dissolved themselves into the tribe, and that the tribe, joining with others scattered through several villages, constituted the city ; and of several civic commonwealths is compounded that which usually takes the name of a State.

With regard to this process, however, we find two points to be observed. One is, that such union or incorporation of several cities and provinces be accomplished by the free and spontaneous act of each part, and hence that each part of the new whole retain an equality of rights and functions with the other parts. And if the result is brought about, as does happen in most instances, through the effects of a conquest or any other violent mode of dealing, it should in the length of ages be proved superabundantly by various and patent demonstrations, that the old change has obtained a full adhesion and consent, durable and uninterrupted. So have the various provinces of France and Spain, so have the three British kingdoms, which were conjoined and united by conquest or by inheritance, manifested in the long course of years their firm and unanimous willingness to persist in that identity or unity of social and political life. The incorporation of the Basque provinces, on the contrary, with the


political unity of the Spaniards, was effected and afterwards maintained by violence. Reason and justice demanded that, through the slow workings of time and civilization, those peoples should be led of themselves to acknowledge the utility of their living with the Iberian peoples a life together in common. Likewise the situation of the Irish was an iniquitous one, when for their religious difference they were deprived by angry England of the enjoyment of their political rights.

The second point to be observed is that the assent of the people does not always testify that it has been well treated, or that all the conditions of justice and equity have been fulfilled in its case. The law is therefore accomplished and duly honoured by the consent and satisfaction of the people when issuing from a distinct and enlightened consciousness of the people's own being, and when the judgment of the people has not been seduced by profound and invincible delusions.

In history, all this appears confusedly enough, and violence goes linked together with right, and necessity with spontaneity, under semblances oddly mixed. Nevertheless, the principles for which we contend lose not hereby their reason or their efficacy; nor do they ever sink utterly down amid the tempest of events, but sooner or later they reappear above the agitated surface, like those fair stars which hovered over the Ionian sea to

show where the lyre of Sappho lay buried in its depth.

The other supposition which has been started is that of a State which should lose the government of itself and confide it to a foreign people, putting itself altogether into the condition of a subject or a servant. It is manifest from a general point of view, that such an act transgresses the bounds of what is allowable and due. For no being can rightly choose the annihilation of itself, and the State, as such, does hereby annihilate itself, abolishing at a stroke its inward and outward autonomy. So, too, that liberty should be used to destroy liberty, is a contradiction; though we may conceive of its being strangely and injuriously abused by a nation, which thereby displays its freewill and pleasure as somewhat larger and more developed than before, whilst the faculty of freewill itself remains and subsists. Secondly, the State cannot throw away that which is the principle of all good, and the essential condition of all perfectible activity, and which is the sovereign instrument of suitably accomplishing the high and noble aims for which society exists; liberty is all this. It is so, because the perfectible moral good of private persons and likewise of the public springs out of an energy deeply rooted in the mind and soul,—therefore arising from a force which is quite voluntary, full of its inherent activity. For the same cause, the civil law condemns not only



slavery, which amounts to the civil abolition of the human personality, but every contract of perpetual and unredeemable servitude betwixt man and man. Strange is it, indeed, that the law of nations should have remained, on this point, inferior to the civil law, and that whilst the Roman legislation was unintermitting in its generous concern to release the private citizen from bondage, and whilst the Northern nations boast of having now eradicated the last relics of the serfdom of the glebe, the international system of law still speaks so timidly of the innate and imprescriptible rights of the peoples ! And let us add, that this latter kind of liberty is yet more necessary than the former. More necessary, inasmuch as the individual man, though he be in servitude and chains, may with an effort preserve the liberty of his spirit, and may accomplish in another mode, and under other conditions, a certain heroic purgation and wondrous perfecting of his inner and immortal nature. But for a whole people, this is impossible ; in servitude, it becomes of necessity corrupt and abject ; and therefore Gian Vincenzo Gravina has rightly declared the liberty of the nations to be a sacred thing, hallowed by right divine.

Here we may remark, in passing, that when a people subjects itself, as it sometimes does, to a foreign king and one who wears the crown of another kingdom, it is not merely choosing for itself a new

monarch, but it is incurring an extreme risk of losing its own autonomy, since if that monarch has an inclination to do so, which he seldom fails to have, he will by the arms and revenues of the one people subjugate the other, and in this experience both ancient and modern history abound.

For the same reason, we have no doubt about deciding that, according to severe and exact principles of law, those Confederations are not legitimate, one member of which is monarch of some other extensive province exempt from all the Federal relations and obligations. It seems manifest that such a prince cultivates interests different from, and perhaps even opposed to those of the Confederation; and, in the Diet, his vote will always prevail more than it ought to do, even though he do not intimidate and force the votes of the others. In the Germanic Confederation, Austria preponderates, with all the weight of those States of hers which are foreign to the Confederation. Hence, the eight million of Germans (for they number no more) in the possessions of the House of Hapsburg, mingled with Italians, Bohemians, Hungarians, Croats, and Poles, have given law, hitherto, to all the rest of Germany, and have repressed in her every aspiration towards greater liberty and union. The erudite Germans seem to have forgotten how Philip, having craftily insinuated himself into the Amphictyonic League, and having assumed the faculty of meddling

in the affairs of Greece, then, by joining together the arms of Macedonia, Illyria, and Thrace, subjugated the Greeks easily enough. The same thing might have happened to the Swiss, so long as a door was left open at Neuchâtel for Prussia to interfere without illegality in the affairs of that people. And the same thing would be sure to happen in Italy, with any species of a Confederation in which Austria should be a partaker.

But suppose that a weak people with its own subjection repays the protection of the strong; or suppose that a rude and barbarous people submits itself to another which is educated and civilized?

Firstly, these two hypotheses, which cannot stand paired with each other, are to be distinguished and separated. It is very natural that those constrained by an extreme necessity should have recourse to the aid of the powerful, and bargain for it on whatever condition. On the other hand, it is not natural for a barbarous people to consign itself into the hands of a civilized people in order to be educated and instructed. Its very barbarism hinders it from recognising its own inferiority; and when this does come to pass, it is a sign that the barbarism is giving way by some moral transmutation; in which case that people will feel that it is not in need of going into servitude, but that it will suffice for it to follow the example of others and to receive their influence, as Japan now appears to be doing, keenly

estimating the value of European civilization, but not therefore a whit disposed to purchase it at the price of a condition of vassalage. There is also, as we have intimated above, a sort of contradiction between servitude and becoming civilized. In a servile country, mankind will certainly undergo an outside polishing process, and will adopt the ornamental, the luxurious, the material and mechanical parts of the civilization presented to them, rather than its essential and intrinsic part; this is what we see in India, and we see it in Algeria.

Leaving this, and going back to the case of a nation which repays with submission and subjection on its own part the aid or the protection of those stronger than itself, this species of compact appears not worthy to be condemned, at least on the part of the people thus succoured and protected. For existence is in the first place to be thought of, and next, to exist in a free and civilized manner. And it cannot be imposed as a law and duty upon any people to prefer its own extermination and death to the conditions of servitude and tribute, though the fame of men who have done so lives gloriously for ages in the mouths of all mankind. But on the part of the aiders and defenders, it is an ungenerous compact, and in the present day it becomes immensely more so, through the rapid growth of the sentiment of humanity amongst all civilized nations; conquests and dominations are becoming odious, and every

people is arriving at a clear and vivid consciousness of its own being and of its own moral value. At any rate, the contract we are discussing is one temporary by nature. As the one contracting party cannot render itself a perpetual serf, so cannot the other become its perpetual master. In private life, one may refuse to grant a loan to a distressed man, but it is not allowable, if one does grant it, to demand enormous usury, though he under the gripe of necessity consent to it. Nations likewise may refuse to succour the weak who are menaced by the violent and formidable ; but granting that succour, it is exorbitant and unjust for them to demand as a compensation perpetual vassalage, or any other condition which offends or tramples upon the original and inalienable right of those others, even although, menaced with the last degree of ruin or with a much worse slavery, they consent to it. Such a buying up of the liberty and independence of the peoples has somewhat the air of those contracts and documents which were in the dark ages imagined to be drawn up by the demons, and by means of which a man sold away his soul for ever. But, said theologians, the soul is not saleable ; it is not ours to sell ; and thus they sought to prove the iniquity of such a contract. Neither is liberty saleable, say we ; and if to use it or to abuse it be ours, not an article of sale is that faculty or principle which has been infused into us by the breath of God, and which, as

Homer says, itself is half a soul. Nor does this rule fail, though history should furnish abundant instances of the contrary, almost in its every page bearing testimony that the protection of the strong and the educational influence of the ordering nations have oftenest been paid for with a permanent and not seldom with a most severe servitude. The science of law seeks out firstly and defines not that which is, but that which ought to be, and beholds with the intellectual eye, athwart the length of ages, one period approximating to another. Amongst the nations, too, a new era in this respect is now beginning ; and to augment one's reputation and authority with the peoples appears now to be esteemed a gain preferable to that of conquests and tributes. About thirty years ago, to cite only one example, France having afforded her succour to Greece against the cruelty and the force of Ibrahim, forbore to ask any recompence.

But it is a fact, insist the pertinacious adherents of the old doctrines, that the lesser States have almost always had to succumb to the mastery of the greater ; and this having gone on in peace for several centuries, and having been recognised by friendly Powers, why may it not claim to be legitimate and bear upon it that stamp of prescription which all jurists are ready to concede to any title or kind of possession ? What ! would anybody dare to affirm, for example, that Venice for many centuries held a wrongful dominion over

Dalmatia, which was always devoted to her, and which blessed the mild sway of St. Mark?

Two matters of very diverse nature are here brought into the controversy. Prescriptive right is one thing, and the case of Dalmatia or any similar territory is another.

As for prescription, that is, the simple fact of the foreign sovereignty having been maintained and protracted for a very long time, tolerated by the subject people in silence, and sometimes with the abandonment or withdrawal of other more ancient possessors, nobody will say that this can beget a right either with regard to the old possessors, if such there be, or with regard to the country so occupied and subjugated. And we may wonder to see how Grotius, Vattel, and other noted publicists treat of this theme in the manner of civil lawyers, and with the same maxims and standards that regulate the usufruct of irrational and trafficable objects. There is no prescription whatever as against the essential and unremoveable rights of the human person and of human society; and by the rational foundation of this latter it is established that the inward and outward autonomy of a State is not an object of possession, and therefore not of prescription. The State wholly possesses itself; nobody outside it can ascribe to himself the ownership of it. Hence the peoples live either within themselves or in union with others; that is to say, they either provide for

their own ends by laws and ordinances of their own, composing a true and perfect individual of the universal human family, or else they enter in as part of another larger community, with an equality of rights and functions, like those streams which, entering into the royal flow of grander rivers, confound their own with other waters and lose their proper name. This is the general abstract doctrine which is inculcated by reason and science. The actual reality does not contradict these principles, though it confuses and makes their application dubious by setting up in practice some amphibious kinds of societies, if we may so call them. Thus it has happened that, when certain countries were annexed to certain others, this due and perfect civil equality did not take place between them, from the obstacles presented either by an absolute and repulsive form of government, or by the heterogeneous nature of the component parts. For example, Dalmatia, along with the Italian provinces of the Terraferma, and with the Ionian Islands, was a Venetian province; but none of those three got admitted to be a partaker of the Venetian government or of its political rights and privileges, because the State was ruled by a form of aristocracy the most absolute and repulsive. In other places, of which we may take the kingdom of Hungary for one, diverse languages and races have kept certain provinces in a situation not of equality and communion, but of inferiority and subjection. There have been,

and to this day there are, many races which have thus lacked power and opportunity either to rule themselves by themselves or to fraternize with and entirely confound themselves with other social bodies. Hence their condition is an imperfect and irregular one, and their inglorious destinies are decided not by reason and by right, but by accident and force. Still, the tardy and occult progress of civilization does sometimes, by removing differences and by consolidating various franchises, complete the entire and equal incorporation of a province into a State; and it does sometimes, on the other hand, by invigorating afresh the sentiment which a nation has of its own existence, and by furnishing it with new means adequately suited to the object in view, excite in the minds of its men a firm and irresistible desire for its independence.

In this way shall the congregations of mankind one after another attain to both the forms of their autonomy above described, the inward and the outward; and in the universal commonwealth there shall not be included thenceforth any but perfect individual members; and towards this result most conspicuously, though more from a genial instinct than by any effort of science, the age we live in is labouring and devoting its care. But that science also may not fail to perform its duty, we will now define with greater rigour the sure and guiding axioms of this great concern, shedding thereby fresh light on the matters already discussed.

CHAPTER III.

THE OWN COUNTRY.

Now if we return to consider the uniting together of several tribes, or that of several cities or provinces in a single State, let us never lose sight of the moral principle which informs or determines that action, and which consists of a deliberate and spontaneous willingness to effect it, for the purpose of acquiring a new autonomy, larger and better than their preceding one. And where it happens that the fact has been accomplished against their will, it never becomes legitimate until the approach and consent of their minds be generally manifest and entire.

It results from this, that a congregation of families already exercised in a common political life may never on any pretence be forced to unite itself to another social body ; not even though the latter be naturally allied with it by a community of race, of tongue, of religion, or any other sort of connexion ; and such would be the case of the Spaniards if they wanted to annex the kingdom of Portugal ; or the case of the three Scandinavian countries, Denmark, Sweden, and Norway ; or still more exactly the case of the Italian provinces which are disjoined, and the case of the Spanish provinces in the New World. In like manner, and for the same reasons, nobody

can rightfully separate two peoples which, feeling themselves to be free and autonomous, have chosen to combine their destinies and to constitute a single social and political body ; as though, for instance, the Germans should now force the German part of Switzerland to join itself to their Confederation. It is evident that this principle is valid with regard to the internal composition of the State, and also with regard to any kind of league, transitory or perpetual, it may have contracted outside.

But let us assume the union and incorporation of several autonomous provinces to have been done by the mutual will of their populations, and that there are many solemn proofs and attestations of a complete and spontaneous adhesion, or of its having grown up so in process of time, by the influence of habit and the satisfaction of their legitimate interests. It is certainly not then allowable for any of the parts to disavow and undo that aggregation afterwards, under the pretext that one or another of them would find it more profitable to separate itself and live a life of its own, or else to annex itself to another State, though by this we might even admit it would get more protection or would avoid the mischiefs of intestine discord and prevailing depravity. We repeat that this transgresses all the limits of good right, and a minuter view of it is desirable, on account of the importance of the question.

It was laid down above that men in a State are

men intending to reach together, by their diligent co-operation, the final degree of union and social reciprocity, as inclined thereto by their situation, by the accidents of climate, soil, blood, and other circumstances. This species of society, which Aristotle has well called perfect society, creates for every citizen *his own country*; and this is the *Patria*, a sacred name, which signifies something far higher than the accident of his birth in a certain locality.

What is signified then by the *Patria* is that specific territory and that particular congregation of men, to which every inhabitant and member feels himself bound by all the duties and rights, by all the instincts, the hopes and affections of their common life. Hence it is an obligation, as it is a constant and unremitting privilege for him to share in all its good and in all its ill, in every damage and every compensation, in its prosperous fortunes and in its disasters, now and for ever, in life and death. And herein although the effects of sympathy and sentiment prevail, no less than the positive injunctions of rational public law and of strict social equity, and although the inmost and purely spiritual capacities of men contribute along with their outward and legal existence to this purport, nevertheless the multitude acknowledge no such distinction, and these causes combine together to produce for us that exalted moral entity, of which we esteem ourselves a vital and inseparable portion.

Looking at this, it is clear that if such an associative and affectionate union could admit of exceptions and reservations, and if it were to be understood that each component member embraces and maintains it for so long as it shall be profitable to him, reserving to himself to break it at discretion and seek another better country to belong to, the real, true and effectual *own country* would never come into being anywhere. But the attainment of the aims which nature has pre-ordained for us, through civil greatness and prosperity, is a very slow, laborious, and difficult work. For this it is needful that every man should mean, with regard to his own country, to maintain unconquered and unalterable the fulness of such mutual faith, both for the present time and for the remotest future, in the same way as our fathers were wont to feel and will that entire fidelity of theirs; and to sum up all, the own country, considered in its profound moral significance, implies the complete security of each for all, and of all for each.

With regard to some very rare cases, in which the separation of a people from the others of its brotherhood may become lawful, notwithstanding the sacred ties above described, they have been discussed by us in another treatise, to which we refer.*

* This reference is to an Essay by the same author, published several years ago, "On the Better Congregation of Mankind, and on the Principle of Nationality." That treatise not having

Civil legislation has been able to deal indulgently with this matter, and spared to inflict grave chastisement upon those who renounce their own country, and who scruple not to exchange it for another country and another citizenship for ever. It has been deemed that the ties of nature are herein more efficacious than any written prohibition could be. Our own country binds us to many other duties of intrinsic morality, whereas the law determines only our external and juridical obligations ; and it has not therefore seemed necessary for the safety and welfare of the State to restrict in this instance the liberty of the individual citizen, it being most certain, moreover, that whenever the security and the liberties of the people are sufficiently provided for by their own country, emigrations among them will be very rare, and will be amply made up for by the abundance of foreign incomers. Besides, if their own country is not obliged daily to feed all its indigent persons, at its own expense, and if it cannot possibly do this, it would be a cruel thing to forbid them to go and seek their subsistence elsewhere.

But this liberty or licence permitted by the civil legislation does not in the least alter the fact and

been translated, the Editor now gives the passage above referred to in Note C, at the end of this volume, "On the Voluntary Separation of Provinces."

principle we have just ascertained, namely, that in those regions of the earth which are not barbarous, every man is born a citizen, belonging to some one particular and entire society, which is tending to arrive at the greatest measure of that civil fellowship for which it is designed and pre-ordained, and the bond of which is therefore the closest and the firmest that he has, and the most obligatory when it is not set against the supreme duties which bind us to the whole of humanity. Now to every sound judgment it must be plain that our citizenship at first is procured us by Nature herself in having assigned this place for the cradle of our birth, and this place for the nativity and burial of our ancestors. Then, the education of our spirit and intelligence being now somewhat advanced, reason and moral sense persuade us to enlarge the conception and the love of our own country, to the province, to the State, and to the nation; just in the same way as the original narrow autonomy of the native district merges itself in that of the province, then in the larger and better one of the State, and finally in the greatest, that of the whole Nation. Of this our own ultimate *patria*, which is certainly the most excellent of all, and which was but little known to the ancients, while to us moderns it is so dear and precious, we must now expressly speak.

CHAPTER IV.

NATIONALITY.

THE nations are a favoured creation of God.

In course of time, and with the maturity of civilization, it appears that nations alone are to constitute the true and mighty individual members of the great human family. They all turn their glances towards the Sun of truth and justice, but each of them beholds it in a peculiar phase, and with a distinct ray of it the soul of each is warmed and coloured. And so arises, among the several peoples in the universal republic, the high mutual interchange of privileges and faculties, of enterprise and glory, which in every city is carried on by private men who reciprocate their advantages and services.

Every nation was begun by a few families derived from one stock. This hidden and diminutive fountain of the peoples, enlarging and spreading aside into many tribes, and these into many others, mixed with diverse races, did seem to be quite transformed from its primitive being, and even its memory to be lost. But in time, a certain identity of their nature and their fortunes came to display itself, and gave birth to one same language,

one same genius in arts and letters, with many common usages and traditions, and some substantial homogeneity in spite of their utmost differences and oppositions.

The clear and vivacious sentiment of this identity sometimes awakes in the peoples but tardily, yet it seldom fails to awake. In France as well as in Spain, in the Kingdom of Great Britain, and in the numerous States of Germany, cities and provinces were at first living with scant unison of mind and thought, and, as it were, foreigners to each other; then they came to recognise their belonging to a single great nation, endowed with certain illustrious qualities and called by God to fulfil certain peculiar and glorious destinies in the varied and laborious course of human perfection. A similar consciousness has arisen among the Slaves, and has energetically renewed itself in the Greeks; it is now strong in the Hungarians, in the Scandinavians, in the Roumans, and it is deeply, ineradicably implanted in all Italian hearts.

Why this craving to form a nation should in our days make itself so universally felt, with more force perhaps than it ever did in any age before, the reasons are not hard to find, and they are chiefly these. The vernacular languages, esteemed and employed in writings, have excited in the peoples who speak or write them a sense and a conception of their natural dignity and fraternity. The commonness in

use and assiduous improvement of this organ of expression have brought in a certain increasing community of thoughts and affections, which has since been made manifest and acceptable to all from being generally and correctly imparted to them by conversation and books. The love of liberty, in the next place, now widely diffused, has persuaded every one that its foundation rests upon that independence and upon that interior unity of interests and understandings which Nature herself, in creating the nations, has provided. Above all, this has been furthered by the still augmenting facility which cities and provinces enjoy, of becoming acquainted with each other and looking upon each other's countenance, and comparing together their own destinies and their own forces. One hath said thus unto another: Why should we not return again as we were in the beginning? *Sic genus amborum scindit se sanguine ab uno.* We have indeed been divided by fortune so as to forget what was our origin; but now it revives in our mind full of grace and radiant as the sweet memories of a youthful age.

Another cause of this movement has been the need which they have felt of strengthening themselves against other peoples which are excessively aggrandized by fortune or by conquests; for it has been wisely deemed that their principal force should be derived from fraternizing and joining themselves with all the neighbouring populations disposed by

nature to constitute a single community with them.

There are some persons, however, who strive to conceal the principle of nationality, by proving that it is impossible to give an exact definition of it and that it is invariably found to be fallacious when confronted with the facts. They say that by chance as well as by conquest, by revolutions as well as by treaties and conventions, peoples have been so mingled and oddly divided that it would never be practicable to join and incorporate them conformably with their race, their speech, their creed, their territorial site or any other common property and connexion. What nation is pure, they ask, and entirely homogeneous ; what State in Europe is not foreign to some portion of its own subjects ? England presses down upon the Ionian population, France upon the Algerine, Spain upon the Basques. Are not the Corsicans, too, Italians born, and those of Alsatia, are they not Germans ? The Poles of Posen, are they then Prussians, and is not half Silesia also Sclavonic ? Should we call the Lithuanians or the Finlanders Russians, or the inhabitants of Riga and Courland ? And if we see all the governments tarred with the same pitch, if none be guiltless with regard to the pure principles of nationality, what profit can be got from a theory which can never be applied ; or rather, how can it be a true theory, if in every time and place it be contradicted by the facts ?

These indeed are weighty objections, and I think perhaps nobody has yet refuted them, because the germane and simple essence of the principle in question has not been apprehended. But where and when could any complication of facts avail to ensnare and overthrow a great decision of science, if it be based upon the truth? The stubbornness with which the facts withstand any attempt to reduce them to order and explain them evinces but too well the inadequacy and incorrectness of the argument which would deal with them. But no sooner is the right and sufficient argument discovered, than it appears like the god in the *Æneid*, lifting his head above the stormy ocean, and with his potent *quos ego* restoring the calm.

The first constituent virtue of the State is, as we have said, a certain permanent moral unity; it is the spontaneous and assiduous concurrence of minds and wills in the common intention of composing and maintaining for themselves that form of society which Aristotle has called the most perfect kind, because it craves and seeks the most intimate and best-ordered union that a congregation of families can contract together for their mutual safety, convenience, and perfectibility. We added that this perfect sort of society and this ultimate degree of social union are solved and fulfilled by the sentiment of our own country, in the full meaning assigned to the word *patria*, and we took care to remark that

this sentiment and the work proceeding from it demand, above all things, an entire common fidelity, and imply a sacred, mutual, indissoluble engagement.

Hence we conclude that in every place where many peoples have concurred to dwell together and make for themselves together a country of their own, there arises a State which is fully and inviolably autonomous, whatsoever may be the origin, the race, the language, the traditions, the religious worship of any of the citizens or all of them. So, for example, Switzerland is a true country of the people's own, and therefore is an autonomous and inviolable State, although from the differences of races and speech within itself it is not, in the ordinary sense, properly a nation. Englishmen, Frenchmen, and Spaniards, with others, compose the various citizens of the United States of America ; French at New Orleans, Spaniards in Florida and Texas, and English for the rest. But all these have constructed for themselves their own sole and common country, the country of Washington and Franklin, which they cordially and unconquerably do love and serve.

If, therefore, in congregations of men like these, the form and essence of a State do evidently exist, with its outward independence and liberty not to be touched, how much the more shall not that State appear to be a true one and a real one, every way autonomous and respectable before all the world, which is formed by peoples of one blood, who speak one

and the same language, who are furnished with arts and a literature original and proper to themselves, and who, in fine, are resolved at any cost to compose together one fair and indivisible personality, and all to live in the life of a single civil association? Certainly, if we go by experience, we shall see that it is by nations that States are ordinarily founded, and that close political conjunctions of races different in breed, in tongue, and in temperament, seldom get so far. It is no wonder if the separated parts of nations aspire to their social unity, or if those which endure an alien yoke and which really do not compose along with the dominant people a country of their own, endeavour to emancipate themselves, so as to live by themselves and for themselves. Be it mainly considered that, without the foundation of that moral unity by which the State is informed, the highest social aims are never attainable. On the other hand, if there is a free and close conjunction of the parts of that whole which we term a nation, they attain or they recover a signal and marvellous virtue tending to the best human greatness and prosperity.

It proceeds herefrom that most persons, when they talk about the certain and legitimate autonomy or self-rule of political bodies, mean to talk about nations, because it is in these that Nature herself has established certain autonomies proper and, as it were, inborn. Publicists ought therefore at the pre-

sent day to teach and solicitously persuade the respectful observance and utmost possible regard of this great natural and original fact of Nationality. They should notice where the consciousness of it is already aroused and complete, and where it is going on towards completion by the clearing up of ideas and the strengthening of desires in the breasts of the people. Writers of yore might well take slender account of it, at a time when a large portion of the European peoples seemed to be careless and incurious of it, and when the very sense of liberty seemed to be obtusely felt in their souls.

For all that, we do not perceive that in this matter there are indeed so many uncertainties and ambiguous points, or such frequent discrepancies and contradictions as some persons have been pleased to find in it.

Whatever be the diversity of cases or the involvement of accidents, we cannot now fail of a sure criterion to arrive with certainty at their substantial purport. For example, would we ascertain the net truth as to the rights of the House of Hapsburg to the Milanese and Venetian territories? Then let us inquire in the first place whether Austria could at any time compose with those populations the certain spiritual unity and conformation of thoughts, wills, and emotions, requisite for them to deem that they form, along with her, one only and the same country of their own. And if, on the contrary, we

find that the Austrians and the Italians have never ceased to regard themselves as aliens the one to the other, and that the result of this has been, not one State but several, and not equal and free, but the one dominating and the others dependent, this will by our principles be enough to show which side is in the right. On the other hand, when you hear the Germans complaining that Alsatia is lost, and some of them not concealing their hopes of one day recovering it and reuniting it to the great Teutonic family, you will before all things examine whether the people of Alsatia have or have not voluntarily merged their autonomy in the grander and better one of their powerful neighbours ; and you will find by abundant and splendid instances that in the soul of that population France, as their own country, lives, reigns, and flourishes, to save which they have lavished their blood and have lightly regarded the greatest sacrifices ; and in that case our principles cannot leave you a moment in doubt as to the sentence to be pronounced upon it.

Let it therefore be held for a maxim of international law that where there is not any competent moral unification or any spontaneous social communion, and where, in short, *the own country* of those peoples is not a single one, but there are several and diverse ones, there is violence but not justice, there is conquest but not self-renunciation ; and force though dressed up in legal forms, retains its un-

altered quality. However, although the moral unity of a State is oftenest created by national homogeneity, it is not to be decided that, where there is not a nation, no autonomy can subsist ; since the firm and permanent will of mankind is superior even to the process of nature ; and on the other hand, the former agency may be absent where everything appeared by nature prepared for a social and political unity, just as it has happened between the Portuguese and the Spaniards. This principle of nationality, therefore, which is so much talked of at the present day, and in which some writers attempt to recognise a first foundation of the new European Law, ought rather, if it would stick entirely to the truth, to define itself in a wider and more rational manner ; asserting that those congregations of men, which do attain to constituting a country of their own and reach thereby the ultimate degree of perfect association, are altogether and absolutely free, not to be coerced ; and on the other hand, that those factitious and violent political conjunctions, in which there are several States and several *own* countries, are such as it is always desirable to put an end to, and such as it is right and a duty, in some cases, even to put an end to with the sword.

Now bringing back our discourse to the character of nations, we should observe that, with respect to their autonomy, there are three species of them. There are firstly those which have, as ordained by

nature, achieved their unity and independence completely ; for example, France, Spain, England, Russia, and a few others. In the second place, there are certain nations, each composed of many populations, which though acknowledging themselves to be all united and sisterly by their community of race, language, genius, and other common attributes and qualities, nevertheless dwell apart, or draw to each other by no closer tie than that of some federative compact, as it so happens, in Europe, with Germany, and in America, with some Spanish colonies there. The third category comprises those nations, which not only remain divided between their several peoples composing different States, but in which one or more of those peoples endure a foreign yoke, to the evident humiliation and weakening of them all. The examples of this condition are more plentiful than with the presumptuous boast of our modern civilization might easily be reconciled.

It is shown by these distinctions, that the peoples which are mentioned in this last class have yet two very difficult undertakings to perform ; they have to expel the foreigner, and they have to resolve their partial autonomies into a total and single one. For those of the second class, there is only one of these two troublesome tasks to discharge. That is an enterprise which is, as we have remarked, wholly free and voluntary, and one which may adopt a variety of forms ; because the merging of the partial

in the total autonomies may be imperfect and conditional, as in fact that of the American United States and of the Swiss Republican Cantons is imperfect, since although each of these two does constitute one single political State, it does from its federal character reserve a large portion of the sovereignty to the several peoples which compose it. But since for men in Switzerland and in America there is an effectual unity of their own country, and each province confesses that its individual and peculiar interests are to be postponed to the general interests of the confederation, it should in our opinion therefore be deemed that the merging of the partial autonomies in the entire one of the State is morally full and completed, although imperfect with regard to political institutions. We thence derive a grand criterion of the moral and social unity of peoples and nations, which is this,—that when the various and distinct populations, of which a particular people or a nation is composed, are disposed to make the proper and peculiar welfare of each one subject to the common welfare of all, they have already got to the institution of one great moral personality of which they feel themselves to be the noble members, and one sole, unique, own country of which, equally and perpetually, all they are the citizens. Though it may chance that this does not arrive at manifesting itself, proportionately and conformably, in the public institutions; as for example it occurs in Ger-

many, where the native country of which the *Deutschen* are so proud has no popular and direct organ for expressing its common ideas and purposes.

We, therefore, from what has hitherto been observed, conclude in favour of the following propositions :—

Firstly, that States are, each of them, a real moral unity and a perfect, imprescriptible autonomy.

Secondly, that according to exemplary abstract law, there may be no States dependent on other States and exhibiting a moral and political duplicity. Every people lives with its proper and independent life, or else, by its own free act, it resolves the self-rule which is competent to it into another greater and better one, sharing equally in its rights and duties. The *Jus belli* can never legitimately conduce to the permanence of conquests or the annihilation of any State. As for this, we refer to the liberal and now generally accepted doctrines of modern publicists.

Thirdly, leagues and confederations, however close-drawn and intimate they may be, do nevertheless maintain a multiplicity of States and autonomies, unless they arrive at constructing, by their spontaneous and permanent act, a single Federal State, in which, politically, their own country is a single one; and, as a moral personality, not divisible, though the provinces themselves may keep a certain portion of sovereignty.

Fourthly, it is not repugnant to imagine the parts of a nation being morally quite conjoined, although their political institutions be such as to maintain for each its own self-rule, as perhaps was some time the case in Switzerland. But this can only happen by accident, and *ad tempus* ; for it is impossible but that the sense of the unity of the *patria*, created within the heart of an entire nation, should come to express itself in the external forms and conditions of its social and political life. And exactly this case has been realized in Germany and in Italy, if it be indeed true that both the one nation and the other does always postpone the respective interests of its several populations to the common interest, viewing the whole broad territory of the nation as one sole and indivisible native country.

Fifthly and lastly. Throughout the process by which the peoples draw towards, attach, and join themselves with each other, many gradations and successive transformations occur ; but the common and perpetual essence of these actions is, in the view of Law, their peculiar and complete spontaneousness. Those forms, however, which come midway between a Confederation of States and a Federal State, are imperfect and uncertain, and of a transitional character.

But this spontaneousness, above all, we mean to be more rigorously due, with respect to the absence of any external force, inasmuch as nobody has a


right to compel one people to draw towards, become attached, and join itself to another, far less to confound itself with that other so that they have an unity of self-rule as the result. In fact, such operations of closing together and uniting together do proceed from some actual necessity, as for the United States of America there was the necessity to defend themselves against England, and now for the Italians it is necessary to extricate themselves from the foreign yoke, which oppresses not the Lombardo-Venetians alone. More often have political conjunctions proceeded from the vigorous and fortunate ambition of monarchs, and have afterwards obtained confirmation and sanction from the consent of the peoples, tardy or eager as it might be.

But it does not thence follow that, where there is not this consent, it is allowable to assume its existence, or, persisting in possession, to await its gradual production by time and habit. For indeed no length of time can transform violence into a right, though sometimes by long duration a new fact is generated, namely, the consent of the people. Yet every violent and illegitimate government assumes that it has on its behalf the adhesion and the attachment of the governed. It would then be an useful service to enumerate and accurately define the proofs, the testimonies and the countersigns of the genuine and firm consent of the peoples, always excepting those cases in which no popular sanction

can suffice. To seek for an analogy of public with private contracts and engagements will not do, if we consider the extreme difference between the conditions and aims of those two ; and in general, the consent of the people should be esteemed but uncertain and unsound when it is weighed down either by the immediate application or by the incessant threat of arms that are not its own, or even of its own arms mixed with those of the foreigner. The means employed to divide the minds of men, to quench or mislead their good sense in morals and in politics, to dazzle and fascinate the multitudes, are so many and so formidable in the hands of the powerful and cunning, that it requires great diligence rightly to determine that disposition of mind and heart in these multitudes which can present a sincere testimony of their fair and free inclination. Other precautions are also needful to be certain that a total ignorance of their own rights and interests does not altogether obscure their choice. This subject is in a great measure new, because formerly the will and judgment of the peoples were not reckoned an element entering, as it were, into the arduous problems of diplomacy. The practice of publicly and solemnly interrogating their vote has now indeed begun to be introduced. But from its having been quite in abeyance, and held by many potentates in abhorrence, the books of the political jurists do not acknowledge or determine its rightful and convenient forms or discipline. Begin this task now,

ye great doctors of the law, ye who are so negligent to examine this matter, whilst ye have been so diligent to enumerate all the causes which may render a private contract or testament invalid for want of a sincere and enlightened purpose in the testator or contracting party !

Our readers, we think, are now sufficiently informed to extract for themselves the substantial purport of these three foregoing chapters. It is this,—that any foreign domination over civilized peoples is unjust and oppressive, and we may venture to call it impious, because it combats the design of nature and God. If it does nevertheless exist in sundry places, and if modern European law yet shelters under its wings such a thing as this, it is no small gain to ripening science and to our better civilization that rational and eternal law is advancing to cancel it for ever,—a thing upon which the magistral writers of the last age did not enough reflect. Amongst them Vattel, not perceiving that in external liberty and independence lies one of the primary and fundamental characteristics of the State, perverts his definition of it, and resorts to colourable and sophistical distinctions. It is true that in the sphere of actualities, we encounter every sort and degree of subjection of one people to another, beginning with that of the Italians and Hungarians with regard to the Duchy of Austria, and so on down to the tribute which the Ottoman Porte extorts from the Servians, and the homage or *chinea* sent by Naples, in token of vas-



salage, to Rome. Vattel, however, was of opinion, that a people which preserved liberty to govern itself in its internal affairs, though in its external affairs it was dependent upon another, should be regarded as composing a State. But he did not perceive that his distinction could not hold good, since the inward self-rule does in fact always depend very much upon the outward. It does so because a claim of permanent sovereignty or of mere protectorate, where it is exercised by a Power much stronger and more efficient than that of the tributary or protected people, will always produce such an influence and interference as to lessen and restrict internal liberty ; as we have seen, for example, in the case of the Ionian Isles with respect to England, and heretofore in many provinces of the Turkish Empire. Or supposing the contrary to occur, namely, if the tributary or protected peoples should come to equal or even to excel in power those who exact their homage and grant them protection, the matter will surely reduce itself to a bare show and vain contest of honour, which has happened with the kingdom of Naples, far more powerful than the State of the Church.

We will therefore resolutely declare that the State in anywise dependent upon another is, properly speaking, not autonomous or self-ruling, and therefore the denomination of a State, when strictly defined, does not apply to it.

CHAPTER V.

S O V E R E I G N T Y.

WE have settled, it appears, with sufficient precision, what is a STATE or perfect INDIVIDUAL in the Universal Republic or Commonwealth. We have settled what is its original and inviolable liberty, and what its essential, intrinsic form, consisting of a certain conspiring together and homogeneousness of thoughts and inclinations, the fulfilment of which is wrapped up in the entire and moral significance of the phrase "our own country." Then lastly we have seen how the conception and patriotic sense of this *own* country may be widened from the hamlet to the civic commonwealth, from the city to the larger province, to the great kingdom and to the vast region inhabited by one same nation. But in the interior constitution of the country, there is somebody who has to exercise the supreme power and authority, and of this we must now discourse, because the relative interests, dealings, and conventions between one people and another people are debated and concluded by the sovereign power, or in its name. Yet of the many questions and obstinate controversies which this matter of sovereignty is wont to provoke, we select

here only that which has been most falsified by writers and caused most prejudice to international justice. All else that remains is a subject more properly for him who intends *ex professo* to expound and treat of every department of public law.

We had no doubt a while ago in declaring that a people does not legitimately possess any power to annihilate its proper autonomy and liberty of existence by bestowing itself with an unconditioned and perpetual compact into servitude beneath some other. At present we are to inquire, whether every people may not lawfully commit this act with regard to its own monarch, in such a manner that he becomes quite synonymous with the State, not indeed as to the substance of it, but as to its moral form and authority, and so that he is the perfect expression and entire representation of the State. The different doctrines prevailing as to the nature and origin of sovereignty naturally give different replies to this question. But we promised our readers at the outset that we would eschew all too scholastic abstractions, and that we would lead our discourse to such plain conclusions as the good sense of every cultivated and unprejudiced mind could receive. We shall still do so throughout this intricate and thorny subject.

Those to whom the sovereignty of the State appears wholly and only to reside in the people, assert that it, as the absolute sovereign and arbitrary lord

of itself, may effect whenever and however it pleases, such an entire and perpetual transmission of its own power into a monarch and his descendants. We will not speak of the arguments which speculative jurists have valiantly brought forward against this opinion, but we will now inspect the thing by the light and with the guidance of common notions and the evidence of reason. Does this utter and perpetual transmission of sovereignty exist? and how is it proved? Either by some fact, or by a mental presumption. By some fact, do you say? But when and where? Who has ever read the stipulations by which the nations have declared that they divested themselves perpetually of their whole sovereignty and invested with it any, or any other, lineage of kings? Where, above all, where do you find the clause by which they have fixedly and expressly signified that they would not revoke the authority so conceded, whenever any descendant of that royal breed should become a tyrant, and when the very ends of sovereignty and of society should be unfulfilled? Did the entire nation sanction this engagement and decree by its unanimous vote? I should like to know what plan was adopted to assemble it together, and how the suffrages were collected, counted, and verified. But more: any contract whatsoever is invalidated and null if it be made with a slight and uncertain knowledge of what it imports and contains; and it is likewise infirm

and invalid whenever it is brought to pass by such physical or moral constraint as to take away all deliberation and liberty of judgment. At any rate, and even supposing that a whole generation of men agree in choosing to divest themselves of their proper liberty and sovereignty, how can authority be ascribed to them to do the same on behalf of all their future posterity? Must we not rather believe the reverse of this, considering the inestimable preciousness of the blessing which they renounce? It is however needless, and a work of supererogation to say this, since in no archives in the world, we repeat, are any similar *plebiscita* laid up and registered. We hear talk of the *lex regia* of the Roman people, which nobody has ever read, and the text of which is consigned to no authentic document. But one or two deeds of that sort, if they were discovered and cited by the learned, what could they ever signify? Could they indeed have been supplied with all the conditions we have described, avoiding the objections of insufficiency and within the limitations just indicated? Such instances would prove nothing at all except a certain abstract possibility of the thing being done, but not its generality in the common practice of the peoples.

It only remains for us to examine the other alternative distinguished above, namely that the grand bestowal of sovereignty is an act tacitly performed and necessarily understood. But acts

thus mentally presumed to have taken place are either of absolute obligation or else willed by the necessity of our nature, like the fact, for instance, that man has always desired his own happiness, or that he has always been bound to contribute to the maintenance and safety of the social existence. Here are two constant facts which may be presumed with certainty, and it is not requisite to adduce any express demonstration or manifestation of them at any determinate time and place or under any specific circumstances. But who can affirm that the act of the sovereignty of a people being transmitted to somebody, the people divesting itself thereof completely and for ever, is an act of absolute obligation for each citizen, or one proceeding from any essential and necessary disposition of human nature? Even when the very existence of the State is in jeopardy, and when it is convenient or salutary for it to give somebody the full and absolute command, that does not import in the citizens an entire, perpetual renunciation of their sovereignty ; but rather, the peril being by its nature a transient and partial one, which was never common to all peoples and all ages, it follows also that this delegation of the sovereignty is conditional, temporary, and partial. It is not with this, as it is with those mental presumptions to which legists will sometimes resort when they have to guess what is the intention of somebody which cannot be known directly or from

the facts ; as when to interpret the will, not expressed, of a man as to the use and bequest of his riches, they judge it to have tended in the best way, and most conformably to reason and equity. And if it were sought to apply this legal method to the foundations of social life, and to interpret the unuttered will of the peoples according to what was most fitting, the contrary result must be presumed. For a nation endowed with good sense and prudence, nor blinded by violent passions and by sudden fears, never will consent from being sovereign and free to go down into a perpetual condition of slave and subject.

Yet somebody may perhaps advance the following plea. There are several absolute monarchies which have lasted for centuries, and some which stand upright now amidst our civilized Europe, and the devotion and obedience of their peoples to them do not cease ; which is a sure token that the peoples hold them for legitimate ; and such they could only have become by a continual delegation of the sovereign power. Therefore such a tacit delegation on the part of the peoples may well be presumed at least by virtue of its constant and visible effect, if not by the reason of it.

How far it may be true that in Europe absolute monarchies do endure or have endured for many centuries, we omit to inquire, though perhaps it might be found, as a learned and clever woman once

remarked, that it is despotism which is modern, and liberty is ancient. But if we take the thing to have happened as it is alleged, we declare that the due logical interpretation of it is quite a different one, for it is this, that the peoples have but seldom persuaded themselves that they are the absolute sovereigns and givers of sovereignty, which in fact they are not. Sometimes they have yielded to force of arms, or to other real or imagined necessities; while sometimes, by the influence of religion, through consecration or other solemn rites, they have been induced to esteem the person of the monarch divine and omnipotent; and lastly, they have sometimes, perceiving that by those whom they obeyed the wants and intentions of their common life were adequately satisfied,—they have reputed that in them this right, which ought always to be in those most capable of leading civil society to accomplish its objects, did effectively reside. History then does not prove either the sovereignty of the people or its absolute and perpetual transmission into the monarchs.

It is not then from the people, or, to speak more properly in the abstract, it is not from the social body that the entire and irrevocable sovereignty of monarchs is derived. But it may yet be derived from God, reply some of the schools, and say that kings reign absolute by right divine.

That God, who is the true and the sole Sove-

reign, could decree that a whole people for its good shall obey completely and for ever certain particular men and their offspring, we do not deny. But what this doctrine lacks is any proof of this stupendous and miraculous calling of the kings. We know about Saul and David, but we have no sure testimony of the others, and it appears injurious to say that God with his own hand selected Nero and Caligula, Tamerlane and Attila to rule. And it would not do to prove from the celebrating of consecration, even though it had always and on all of them been performed, the divine and immediate election of the sovereigns. It is high time now to have it universally laid down and accepted that the lay power does not proceed from the ecclesiastical, and that Jesus Christ gave to his clergy authority and control over spiritual things, but not over secular. And besides, it would be strange and ridiculous to say, that there was no legitimate monarchy in the world before the vase at Rheims poured out its liquid.

Bossuet, on the other hand, affirms that monarchs are in themselves sacred, because they represent the divine majesty, and are deputed by it to execute the designs of its providence. But for this cause anybody who governs is sacred, and the parliaments and the tribunals no less than kings, where these reign within the limits of a constitution, and the sovereign authority is divided. It is therefore pru-

dent and salutary to establish such checks, were it but to prevent the divine majesty being outrageously misrepresented and the designs of Providence perverted by its commissioners.

Strangely enough, Bossuet thinks the reverse of this, and thinks that, without absolute power kings would be inept to do good or to prevent evil, although he confesses, on the other hand, that kings were created by the consent of the people, and that even conquerors require to get such a consent by time. But it is superfluous for us to argue against a book such as *La politique tirée de l'Ecriture*, in which there is never any proof of what it asserts.

Not so do others go to work, who to lay the foundation of an absolute and divine right of princes have contrived this subtle argument. The monarchs, they say, are certainly not chosen immediately by God, but they are by God immediately invested with their sovereignty. The people indicates the man whom it wishes to obey, and suddenly in that man there exists the fulness of the sovereignty which comes to him from God. For as by God the end of the social community is ordained, so the means are ordained by giving authority to command.

This book of ours not meaning to plunge into metaphysical abstractions, we will just take the premises and consequence of this argument as they are offered to us, without pausing to find fault with the mysticism in which it is veiled, or the impropriety

with which it is borrowed from the miraculous infusion of the Holy Ghost at the consecration of bishops. I would say however to the authors of this theory: I see from your words that the social authority is divine, but not that it should be wholly and irrevocably concentrated in one person; and much less can I infer from what you say that this person is not to be brought to an account, and may not be resisted whenever his conduct is directly contrary to the end for which he was ordained. And it will not answer to repeat the old sophism that, if he have any one to judge him, he ceases to be a sovereign; because high above the sovereign stand justice, reason, and truth, and in their name even the sovereign may be judged, in the same manner as an honest man may judge his superior and openly disobey him, when the latter chooses to prescribe actions manifestly hostile to morality and to what we most properly term the law of God. Provision is made by usages and institutions for this resistance and disobedience being legally and orderly carried out, so that the authority of the law may abide intact, if that of men is erroneously exerted. Surely we know that the principle of Authority itself or Sovereignty is indeed divine, wherefore it is one and indivisible, absolute and indefeasible. But how is it you Legitimists and Absolutists of this world do not perceive that by assigning such attributes to monarchy you lift it off the earth and lodge it in heaven? With these

attributes God is alone the monarch, and no man can possess sovereignty, but only a right to exercise some limited functions of it for the fulfilment of the ends of society, in accordance with the tenor of the laws and institutions of the State, which are indeed a larger and more permanent emanation of eternal justice and reason, but also mutable and fallible, as proceeding from men.

Certain learned Germans are now heard alleging that the character of monarchs is not made divine and absolute by their being expressly elected from above, but that the will and special providence of God make themselves manifest in the length of time and in that series of events which results for each people in a certain form of sovereignty the best fitting to its disposition. And they say also that this form is legitimate and inviolable, when it consists of the absolute and hereditary rule of a monarch. The right divine of kings therefore, if well explained, is an historic right gradually constructed by Providence. This doctrine is much cherished by the German chanceries, which have accused of *lèse majesté* whoever has persisted in denying it.

German philosophy usually appears to us, though it is acute and sublime enough, to be wont rather to depart from common sense, even when it would, from the shadowy mysteries of the metaphysical region, descend among positive facts, where abstruseness finds no place. Now let us ask these eminent

professors of the Historic school, what dose of antiquity it wants to convert the fact or success into a right, and what additional quantity gives that right its plenitude and renders it absolute? For if it be by duration that it is created and matured, then it is not born full and fair, but must, bit by bit, become what it should be, like Hegel's Idea, and then all the generations of men who have existed in the interval have lived beneath a half-right and under a jurisdiction inchoate and dubious! We had in our simplicity believed, that justice and right were things in all ages and places always complete, and identical always with themselves in their essence. So too in those countries (which include almost all Europe) where the monarchy had undergone frequent and substantial changes before it became absolute and despotic, what opinion are we to have of it? Did Providence manifest itself in the monarchy limited by feudalism, by States General and by Parliaments, or but in latter times, when the royal prerogative had abolished all manner of checks upon it? We did certainly think that great account should be made of the products of time, not indeed because it engenders a right, but so that we might comprehend the causes of the continual transformation and correction of the ideas of justice in the minds of men, as well as the obstinate and sinister causes by which their emendation and development is hindered or delayed. In some respects it is but too true that

the succession of ages tends to confirm equally the good and the bad. Did the feudal institutions, with their law of violence and barbarism, lack the sanction of long duration and of full uninterrupted possession? Listen, I pray you, to the editors and patrons of the *Kreuz Zeitung*, and you may hear them swear upon the tombs of their ancestors that their system of privilege is ancient and venerable as the heroes of the *Nibelungen Lied*. But the curious logic of the German Historic school shall not oblige our judgment to alter its course upon this subject; we persist in believing that both just and unjust things do actually endure, but that only those which have reason to exist are legitimate and acceptable. And we see, that no reigning House has oftener and more frequently had recourse to citing this historic law than the House of Hapsburg, with the patriarch of its diplomacy, who ascended the other day from time into Eternity; and yet what State could with less reason or with a worse grace appeal to the sanction of time? For in Austria everything is new. Its princes, who are not now Hapsburgs, are new: the transmission of their dominion, as invented and settled by the Pragmatic Sanction, is new; the majority of its old provinces belonged to the body of the vast Germanic Empire, and when that was abolished in 1815 Austria took them and appropriated them by a title quite different from the ancient title. It reigns in Bohemia after having torn up the primitive


constitution and public liberties of that country by force ; it gained a piece of Poland by the act of spoliation accomplished in the last century ; it gained Venice by the treaty of Campoformio ; and in 1849, with a stroke of the pen, it obliterated the historic law of Hungary.

An allusion to other systems will suffice for them. The greatest happiness of the greatest number is the source of sovereignty as well as of every other right. This was taught by a celebrated English school. We for the present, not stopping to decide whether the general utility precedes and originates the right, or whether it does not on the contrary accompany or follow it, as its necessary effect, shall content ourselves with observing that social and political utilities, well weighed and tried, recommend but rarely and only in supreme emergencies the reposing of an absolute fulness of all command in a single man, so that every one else be his servant and he the lord and master of all. You cannot deny the great utility of the functions of social sovereignty being distinguished and divided betwixt several persons or orders, one limited and kept in check by the others. And it is now a general maxim of us moderns that no civil or political power or authority keeps itself sound when it knows that it has no bounds, or that it can transgress them with impunity.

If, lastly, we consult a doctrine which is partly quite fresh among us and partly is one of the most

ancient, and by which contemplative minds are led to conclude that it is in Reason, and not in any human creatures, that absolute Sovereignty truly resides, the answer to our inquiry is at length fairly discovered. Then Reason will never consent that the exercise of political command should be taken out of the hands of those who may be the worthiest and most capable of it, and be concentrated entirely and for ever in a lineage of kings. By this doctrine, indeed, hereditary monarchy is a good and a legitimate institution in so far as, mixed and tempered with private and public liberties, it maintains and ensures to them a quiet, orderly growth and development; and it cannot be allowed to invite into its counsels or to employ in the government of the State other men than those who may be the most distinguished by rectitude and wisdom.

Need we mention those stale and odious theories which regarded sovereignty as a sort of predial possession, and which now from political ownership deduced the territorial dominion in chief, and now from the occupation of the land derived the political lordship? There is no similarity, as we have already remarked, between the power of the supreme magistrate and the possession or fruition of material estate, between authority and usufruct, between property and civil sway. It must, however, be confessed that in existing laws and customs too many vestiges of those feudal notions and usages still endure; which firstly invaded and adulterated the common law, and



afterwards from the researches of legal doctors got infused into political discussion.

Throughout this commentary, we think we have complied with our original design, which was to abstain from needless abstractions, and by a plain open discourse to convince every educated and impartial reader, that none of the famous systems of the philosophy of jurisprudence has ever been able to establish this proposition ; namely, that by reason and duty, as well as by the necessity of the fact, the whole people is subject and servant, and one or a few persons absolute and perpetual sovereigns ; as a consequence of which princes would never be amenable to be called to account, and in every contest of rights or wills, the royal prerogative must always have the upper hand.

It therefore remains affirmed and variously proved that liberty, being natural and essential to mankind, and the necessary concomitant of all goodness, it is the duty of all to preserve the integrity of its substance ; and therefore that neither can a private individual sell himself to another private man, nor can the entire body of citizens fully and in perpetuity subject itself to the domination of anybody, whether foreigner or native. And public liberty can in law never cease to exist ; as in the exercise of it, it can only partially and temporarily cease ; and every agreement, compact, assent, or occupation to that effect is conditional and liable to be revoked.

CHAPTER VI.

CONGRESSES AND TREATIES.

WE observed at the beginning that it was not for us to explain the whole economy of public government, but that portion which is most substantially connected with international law, or rather with the amendment of it. We have seemingly done enough for this by defining and exhibiting what the inward and outward autonomy of the State consists of, and what are the limits within which civil and political sovereignty should be contained. In showing forth these things, we have especially recognised two essential conditions of its common life ; namely, a certain fundamental and lasting conformity of minds and souls, which is the moral unity of the State ; and a certain innate imprescriptible liberty of each citizen and of the whole social body composing the State.

Having this conception of what is or ought to be the perfect individual member of the universal commonwealth of nations, we may now proceed to examine the most important relations between people and people, in accordance with the true principles of social justice.

The positive and applied portion of international law is principally composed of general and inveterate customs, together with solemn engagements and conventions between two or more States ; agreements and conventions in which all the other civilized States appear to acquiesce, and allege them as of some authority in like cases and circumstances. Those rules and ordinances on which, after long and obstinate contests, the mightiest and wisest nations of Europe agreed and rested, have seemed fit to abide as a great monument of their common rectitude and supply a foundation and permanent authority for every partial negotiation in subsequent times. And of such treaties and agreements those of Westphalia, Utrecht, and Aix-la-Chapelle especially are cited, with the last one commenced at Paris and completed at Vienna in 1815. Truly, the ancient world knew not these councils of the nations, and modern ages have a right to boast of them and put much confidence in them. But for this invention to have proved more advantageous to civilization, and to have always offered a good earnest of peace and justice amongst men, it was requisite that, in these councils of princes and diplomatists, the voice of the peoples should have sounded more freely and without another's mouthpiece, and that the voice of the great potentates should have sounded less clamorously and terribly ; and Aristotle's sentence that " the law is an unperturbed mind " should have been

better exemplified there. Illegitimate interests and ambitions, jealous rivalries and unbridled cupidities came masked into those assemblies; and force under a feigned name has often persisted in dictating the conditions of their compacts. Hence the misanthrope of Geneva was led to declare that European treaties were no better than truces, oftener brought on by the exhaustion of the combatants than by a real conciliation of principles and interests. And as the mischief of wars and revolutions is chiefly felt by the multitudes, their failure of strength and their frantic desire of repose have tempted them cheaply to abandon every birthright, like famished Esau at the smell of a dish of porridge.

Looking at the aggregate of the most notable of these treaties, we perceive that whilst they were still providing more beneficially for certain inferior parts of the law, its inner constitution continued to be vicious, and does yet continue so. It has grown in justice and humanity with regard to belligerent rights, firstly in warfare on land, then upon the waters of every sea. Commerce and business have been better protected; the liberty and safety of neutrals have been better guaranteed; the inviolability of ambassadors has been amplified; and by fair accord have come into practice formulas, ceremonies, and usages, mostly suggested by a right spirit of liberality, equality, and convenience. The particular law of nations has had writers, pragmatic settlements

and corrections, by which it has approached an exact scientific form, and has regulated with facility an infinite number and a minute variety of cases and accidents. But the mode of avoiding the very motives and occasions of wars, and of causing liberty, peace, and brotherhood to reign among the nations, has either been scarcely and seldom sought for, or very ill determined. Errors have remained, involved and as it were lurking in the very expression of the principles; and the greatest error of all was to assume that the external relations of States could be examined apart, without reference to what is the essential constitution of a State and to the axioms by which it subsists: as though the one matter were not intimately dependent on the other, and as though anybody could (as we remarked at starting) well weigh the value of the immediate relations between two objects, being ignorant of the nature and essence of the things so related. Hence was begotten another error, as we shall see by and by; namely, that the official representatives of the States have become confounded with the States themselves, and the will of the princes has been made one identical thing with the will of the peoples. Besides, it has not been sufficiently considered that liberty, concord, and peace between the nations cannot be born in a very different manner from that in which the internal liberty, concord, and peace of each one of them must have birth. The very reverse of this has been be-

lieved: and while it has been sought to find out the most precise similitudes between the civil laws which govern private rights and possessions, and those by which public rights and sovereignty are ruled, those other most true and close analogies have been overlooked which issue from the *datum*, that the law of nature, duly interpreted and rationally applied, does lay the foundations as well of international law as of the particular civil law of each people. Unless furnished with special instances, however, considerations like these will not help us or instruct us much; and therefore, leaving them now behind, we proceed to deal more closely with facts.

The Congresses and Treaties of Paris and Vienna, concluded early in this nineteenth century, and so long after those of Utrecht and Aix-la-Chapelle, came after the most tremendous revolutions and wars that had ever perhaps since the downfall of the Roman Empire happened in this world; and as they were supplied with, and enabled to avail themselves of all the rich experience and science of modern civilization, it might have appeared that they should create a majestic and perfect edifice of political wisdom. Nevertheless, it must be confessed that it was not so: for they were so far agitated by their passions that the errors and blemishes of the old public law, instead of meeting a fair correction, were then enlarged and confirmed. This notably proceeded from the circumstance that in those Con-

gresses of Paris and Vienna, and in one or two others which occurred soon afterwards, the reconciliation of interests and opinions was not impartially studied; but the injured pride and unappeased anger of most of the contracting parties dictated their guiding maxims and prescribed their stipulations, betraying also at every turn many timorous suspicions of the new ideas and new hopes of the peoples. It was not alone the necessity of resisting the ambition of a neighbour that had occasioned the recent wars with Napoleon. The truth was that, along with the French eagles, had been advancing the maxims of civil liberty and equality, and what has been styled the signal and perpetual declaration of the Rights of Man. These were things which were all propagating themselves in men's spirits in spite of the excesses and dreadful blows of the Revolution, and which had seemed to acquire vigour even from the contradictions and violences of Buonaparte himself; since every decree and battle of his, by changing the face of the kingdoms, habituated Europe to forget all the past, and with the most ardent projects to pre-occupy the future. The monarchs therefore had carried on a twofold war,—a manifest war against the conquering arms of the great captain, and a dissembled war against ideas.

But we must look a little further into the causes and reasons of those revolutions.

Towards the end of the seventeenth century, that

great network of feudal hierarchies and ecclesiastical jurisdictions, mixed up with municipal privileges and guilds, began to be stripped off like an armour, with which every part of the civil body had shielded itself, as best it could, against the undefined and ill circumscribed power of the Crown, and had trusted, by oppressing its inferiors, to compensate itself for the oppression it experienced from above. So had the whole world conspired against the poor populace of the towns and rural peasantry, and against the middle class, which had no title or protection, though by virtue and learning it began to prevail against privileged men. Thereafter by degrees the princes acquired a sort of easy dictatorship, with the general consent, so that in the end, beneath the ruthless strokes of the royal power, the old mechanism of the Middle Ages came down all with a crash; and in fact if not by law, an increasing parity and community of laws and ordinances was introduced throughout Europe, from which political liberty also would not very long have delayed to arise. For the course of humanity was fated and pre-ordained, and the ideal law was to arrive at the gradual and universal realization, either slowly through reforms and tranquillity, or else with a bloody impetuosity by means of popular insurrections, of its own conceptions. Anyhow, the princes, not discerning the remote consequences of their doings, proceeded to destroy around the throne those bulwarks and stays, which they

deemed their prejudicial impediments and injurious opponents ; and the more boldly and energetically they so handled the axe and the hammer, the more were they lauded by the economists and philosophers. But when the demolition of the feudal and priestly institutions was nigh complete, and all things almost levelled, the monarchs found themselves rather weaker and with less defence, inasmuch as they remained standing alone amidst the multitudes, into the minds of which, on the other hand, some unaccustomed thoughts and aspirations were making way ; although still, by the natural self-delusion of regal haughtiness and self-esteem, these sovereigns thought they had arrived at the very summit of authority, and identified the State with their own selves alone, their gospel being that speech of Louis XIV., *L'Etat c'est moi*. Then tempestuous seasons came upon them, and there was none to help them ; they had to bear assaults and humiliations abroad, revolutions and insurrections at home. Later, their fortunes were restored by the intemperance and errors of others. First there were the excesses of the Revolution, the most venerable traditions being furiously interrupted and derided : then the native pride of the nations, contemptuously treated by Buonaparte, rallied the subjects to their monarchs, who did not scruple even to catch them with the baited hook of large promises of liberty, and vehemently strove to warm up in them the love of their own


country and hatred of foreigners. By these excitements, at Leipsic and Waterloo, they fought and won. But with all this, the new maxims still lived robust and green, since they had not been lopped off by the sword, and the pith of them was found to be good and wholesome, though it had by factions and the passions of men been involved in an ugly rind. And after, as we have once before said, an infinite storm of human accidents, the immortal archetypes of justice and right emerged from it, entire and full of radiance. Which the monarchs little or not at all perceiving, and forgetting everything of their trouble and humiliation, measured their own power by the greatness of that Empire which the zeal of the peoples and armies had overthrown. They thus met together at Vienna, like a superb and formidable oligarchy, the owners and lords of all things, or like a council of Roman patricians or of Etruscan *lucumones*, disposing at their arbitrary discretion of the *ager publicus* and of the fate of their clients and dependents. It is true that those actually assembled were but few, compared with the whole number of their order, and that the mob of princes, so to speak, had to take the will of those few for law. Yet they were all agreed in their sentiment of pride and arrogance with regard to their own subjects.

And certainly, in that first exultation of the victory, their absolute dominion was not insecure; but

it remained for them to maintain it ever untouched and make it appear venerable. They had learnt from the Cæsar himself whom they had just defeated, to avail themselves of great standing armies and convert the magistrates and *employés* into another kind of militia, numerous enough, and moved by a single, prompt, regular, inexorable will. But all this did not sufficiently provide for the submission of intellects and souls. The late wars and revolutions had consumed too great a portion of that efficacy which the old creeds and ordinary political doctrines had once had to control the consciences of the most numerous classes of the people. It seemed then to those consulting at Vienna, that it was necessary to define upon what bases of morality and justice they intended to construct the new grand compact of European international law. And with respect to morality, we have the well-known text of that famous treaty which goes by the name of the Holy Alliance, first proposed and signed by Russia, Prussia, and Austria, and afterwards adhered to by the other potentates. Here the amplest profession was made of their fraternity and charity in Christ our Lord, and they promised in every affair to proceed by the light and spirit of His Gospel, and with all diligence to induce their subjects to conform to these sentiments and counsels. Who could have expected, from princes who had but that moment sheathed the sword, a style of language so resem-

bling that of a homily or pontifical letter? But it has always been remarkable how, in the face of any enormous and unprecedented events, men are wont to ascribe the cause of them to God, and incline their minds to religion. So did those three monarchs, and especially Alexander of Russia, who was excessively given to mysticism. It behoved them, however, to have accepted the adorable law of Christ along with the broad commentary of this age and its civilization thereon: but whereas it is now held that Christian love and brotherhood require, as the conditions of their progressive perfection, spontaneousness and freedom of spirit, those monarchs intended to reign by means of the subjection of all, and by the repression of every will and every fact which passed in the slightest degree beyond the measure they were pleased to assign.

With respect to the cardinal maxims of public law, great pains were taken to invent some of splendid aspect, acceptable to the generality of minds, and which should yet keep aloof both from the conceits and Utopian notions of popular sovereignty, and also from the worn-out and already disparaged theories of the divine right. They came to a seeming agreement on the idea of legitimacy, purposely avoiding to explain and define it with any strictness, since they felt that they could not do so. Every political system deems and proclaims itself legitimate; but the most especial signification which they attached to that word seemed



to be, the long and quiet possession of sovereignty with the long and tacit consent of the peoples, and with outward undoubted expressions of affection and service. This then was that, otherwise termed the historic right, which we have already discussed; and therefore, the repeated insistence of their scribes that everything ought to return to its legitimate master and to the wise and virtuous spirit of former times, meant simply to express that the kingdoms and institutions which had fallen should be raised up again and set upon foot, all which seemed to be included in the term of the Restoration. But there never perhaps was an instance in which the facts answered worse to the proposal, or kept less faith with the principles advanced, than they did in that hasty recomposition and re-ordering of the European world. The Germanic Empire, indeed, instead of returning to the boundaries and settlements which had been arranged at the Congress of Westphalia, vanished clean off the face of the globe, and its three hundred and fifty States were resolved into thirty-five only, linked together by a Confederation in which the peoples have neither any immediate representation, nor any proper voice, nor any well-ascertained political right. Saxony was cut in half, whilst other kingdoms were, on the contrary, immensely augmented. For Venice to be legitimate, it did not suffice that she had endured fourteen centuries; nor for Genoa to have lasted nearly nine, as well as Lucca and some

of the Hanseatic cities ; they were cancelled by a stroke of the pen. Gibraltar no longer belonged to Spain, nor Malta to the knights of Rhodes. Norway had to submit to Sweden, and Finland to Russia. The Ionian Islands and Dalmatia changed owners ; the Belgians became subjects of Holland. Poland remained torn asunder and divided between Austria, Prussia, and Russia. If all this was called a Restoration, men or dictionaries must have grossly lied. The ignorant architects of the sixth and seventh centuries used to build and adorn their palaces and basilicas with architraves, capitals, pillars, and statues, taken from other and more ancient edifices, producing thus a strange and deformed collocation, but which nobody could call a restoration. It is only the political architects we have referred to, who have practised this enormous alteration of the sense of the word.

But if the Congress of Vienna and its treaties adapted themselves so ill to what the historic system of law required, they preserved on the other hand a scrupulous faith in other stale and erroneous principles, which it is very necessary to bring under a precise review.

They pretended, firstly, that the conquest of a foreign territory drew with it the sovereignty and empire over the conquered people. Prussia, to confirm this, on one occasion, cited the opinions of Grotius and Vattel ; with regard to which we may

refer to what has been said of the natural and inviolable autonomy of States.

It is a fact that some of the monarchs assembled at Vienna pretended and in fact maintained that, having redeemed a certain province from conquest and usurpation of somebody, it was lawful for them to enter without more ado into the place and pretensions of that profligate usurper; although this notion was repudiated even by the publicists, upon availing themselves of whose authority they plumed themselves most.

Secondly, they decreed that the outward autonomy of the States is not an equal one; and that it is competent to the greater and mightier States to assume a superiority over and decide on the fate of the weaker ones. England, Prussia, Austria, and Russia leagued together for the occasions of the war, and agreeing between themselves at Paris on the chief points of the arrangement of peace and new settlement of affairs, did in fact initiate a sort of general hegemony, and one that was not transient and actual only, but permanent and juridical. Hence at Vienna they undertook to dispose of the many territories recovered from France, not merely without asking and obtaining a vote, but without even consulting the other Powers represented in the Congress. And if in prudence or moderation they withdrew from this assumption, the fact was that out of the numerous independent States of Europe, of

which there were but few that did not send their special or ordinary representatives, at Vienna, eight only possessed any faculty or obtained any leave to join in the deliberations, under the pretext that they were the Powers which had mainly shared in the resistance to and attacks upon France. Every other State was fain with docility to accept their legislation ; but with this difference, that the law to some proved favourable, as for example to Holland ; other States, like Italy, Poland, and even several parts of Germany, received a law supremely unjust and oppressive. This we declare without hesitation, in spite of the partial treaties concluded with the smaller rulers, for to these was left only the choice of tempering or modifying that which had already been decreed in principle and fixedly ordained as to their own fortunes. Thus when the King of Saxony was threatened with a total and instant deprivation, he was obliged to agree with the Prussian government in order to regain and secure at least the half of his kingdom. Thus likewise, the mediatized Princes came to some agreement, when they were persuaded that no better justice or reparation was obtainable. Genoa, already condemned to lose her own self-rule, deemed it a gain and an opportunity to acquire some partial and insufficient guarantees, and to see them inscribed in the particular treaty stipulated with the King of Sardinia.


Now, the whole substance of the political world

having thus been, as it were, remoulded at Vienna and impressed with a new stamp, those few great potentates do even at the present day, as the authors and custodians of those conventions, arrogate but too eagerly the right of intervention in every affair which seems to them such as to alter any of its conspicuous arrangements. Of those eight potentates, however, just now alluded to, Portugal, Sweden, and Spain herself were soon left behind ; and in the Congress of Aix-la-Chapelle, three years after the final act of Vienna, their names no longer appear subscribed to the conventions there drawn up and sanctioned. Every day their influence diminished, while that of France, on the other hand, daily waxed greater, although the Vienna deliberations had been directed immediately against her ; but the bravery of her armies, and the irresistible impetus of her popular movements, procured for her much deference and respect ; and so it came to pass that in France and in the other Four Powers above mentioned, the decision of European law is lodged in too great a measure. We quite feel the necessity for the powerful and rich prevailing, as among private persons they do, so among the public, and in the universal commonwealth of mankind no less than in particular cities ; and we frankly acknowledge that the history of Congresses previous to that of Vienna abundantly confirms the fact of the arbitrary disposal by the Great Powers of the lot of the lesser.

But it is the duty of all wise and honest men to endeavour not to let this be assumed as a right, and to see that such an odious and iniquitous privilege as this, which dares not proclaim itself before the conscience of the peoples, shall not, under the name of a convenient and inveterate custom, continue to be maintained. It was scandalous indeed to every right-minded and dispassionate observer, to see for instance quite recently how much difficulty Piedmont had, in 1856, in getting her seat among the Powers deliberating in the late Paris Congress, although she had not spared her own blood and her own treasure in the Crimean War, and at the same time that Austria, which had chosen to keep herself neutral with so much obstinacy and duplicity of behaviour, sat in the Congress, and Prussia too came there, which had no immediate interest concerned, and which had borne no part in the conflict.

This overweening domination of the European Pentarchy is not, I think, sufficiently palliated by saying that each people is free to accede or not accede to the maxims agreed upon, and to approve or not to approve any deliberations regarding an actual settlement.

For the dissent of those who are small and weak, even when they take courage to express it, is of little worth or none; and if we search through history we may find huge bundles of their unheeded protests, lying forgotten long ago in the archives



of imperial chanceries. On the other hand, the big potentates will not fail in any future convention to allege, as a principle already consented to and universally adopted by European law, that which they betwixt themselves have previously determined and ratified; and, if need be, they will make the most rigid and strenuous application of it, as did in fact occur at the Congresses of Carlsbad, Troppau, Laybach, Verona, and some of lesser consequence, where the seeds sown at the conferences of Paris and Vienna were too plentifully fructified. Besides, where perfect good faith does not exist, and where the opponents are not stout and bold, nothing is easier than to stretch and somewhat force the application of principles. There are a few words extant, with no very exact meaning, which are a real treasure for the diplomatists; phrases such as these, "the political equilibrium," and "the public order of Europe," and again, "the due vindication of thrones," and "the necessity of preserving the general peace." Expressions such as these did for many long years serve the purposes of the Holy Alliance, like the cloak of Japhet with which he covered his father's naked shame. In 1831, the Five Powers intervened in the Belgian Revolution, armed, as they said, both with the right and the duty of preserving the European balance, and providing for the security of the peoples and for the continuance of

peace. It is obvious that such occasions for intervention are of universal occurrence, so that no nation and no accident may remain exempt from it.

Happily for the world, this Pentarchy, not composed of homogeneous elements, has not been directed by the same thoughts or the same ambitions. England, being governed by a free Constitution, compelled Lord Castlereagh himself to disapprove the intervention of Austria in Piedmont and in Naples, and that of the Duc d'Angoulême in Spain. So too when, more than once, everything in France was changed, opinions which had been held there as to the regulation of Europe and the guiding maxims of her diplomacy were also changed. But while this goes on, we still repeat that it behoves the students and cultivators of the science of Public Law to lift up their voice against any such privilege between the nations as the preponderance of force and wealth may tend to retain or perpetuate.

Resuming now the thread of our narrative of the effect of the Final Act of Vienna, it appeared that from the aggregate of those protocols another principle resulted, namely, that an unarmed or divided people, or one destitute of an official representative, not only has no seat in the parliament of kings, but that these may alter its destinies at their good pleasure and without being at all obliged to consult its mind or obtain its suffrage, and with still less obli-

gation to satisfy its wish, if it should be asked. So they did in fact with several of the States of Italy, and so they did with the kingdom of Poland. In the same way they treated the Belgians and Walloons, as well as some of the smaller populations of Germany.

Now we do not deny that in the more ancient assemblies of monarchs, the same practice most frequently was followed. At Utrecht, for example, it was decreed that Flanders, the Milanese, and the Two Sicilies should pass under the Austrian dominion, and that Spain should change masters; again in 1738 it was elsewhere stipulated that the Two Sicilies should no longer be a patrimony of Austria, but of a Spanish king, who should remove himself into Italy, and, as the Arragon dynasty did in their time, separate his new crown from that of Castile. Certainly, on those occasions, the will of many princes was consulted, but not that of the Flemings, the Sicilians, or the Milanese; and even in Spain the convocation of the Cortes, which had already fallen into desuetude, and which was renewed merely in order to introduce the Salic law, was little better than a *pro forma* pompous ceremony. But it is strange to think that, a century after this, and in despite of the great progress of the social sciences, and of the education diffused amongst the multitude, the kings and diplomatists convened at Paris and Vienna did not feel how injurious to Law, not less than to moral

reason and to that brotherly charity in Christ our Lord which they affected to profess, was this dividing and bartering of the peoples like a chattel, this disposing of them for somebody's profit like an unoccupied piece of an estate.

It is not for us to criticise the praise and merits of the Congress of Vienna in respect of the art of politics, or to inquire if it be truly entitled to the credit of having preserved the world for at least forty years from sanguinary wars between the Great Potentates, and of having with consummate dexterity balanced the forces of Europe, procuring defences for the weaker parts, and opposing invincible resistance to the stronger. We will only remark in passing that the exhaustion of the peoples, and the turn which their activity has taken towards manufacturing industry and maritime commerce, have done more to guarantee this long peace than the counterweights studied and invented at Vienna have done. But the internal peace of the peoples has remained so unsound, as to display every moment how badly the Paris and Vienna Conferences had provided for it. France has again become much more powerful than those laws of an equilibrium would imply, and hoists again those eagles which the Conferences had fancied for ever destroyed in their nest. And if France be not menacing, that is due to her own sagacity and not to the barriers constructed around her. So neither are the feeble more defended, nor are the

mighty better kept in check ; and the general arrangement of the States of Europe such as it was fixed in 1815 has undergone so much alteration, that now it looks like an old mantle all ragged and patched. But only think how the tailors who made it expected it to be a garment to wear for ever !

CHAPTER VII.

THE NORMAL PRINCIPLES OF A CONGRESS.

WE shall briefly finish our description of the guiding maxims by which in 1815 the Congresses and Treaties of Paris and Vienna proceeded. But we pause one moment to reconsider the matters already indicated, and the amendments it would be feasible to introduce in future with regard to them.

Firstly, it is most certain that in the Congresses in which it is proposed to make any profound changes in the territorial and political existence of most European States, or in which any new decision of the law of nations, or a substantial and unfamiliar interpretation of any of the principles already approved, is brought in question, justice requires that the free and direct vote should be obtained of all those peoples who continue to live under one and the same international law, because no individual of the family of peoples has the authority and faculty of a legislator over his peers. And let it not be objected that there would be serious difficulties in the way of such a consultation, for they are not excessive or insuperable; they rather appear to be light in comparison with those which had to be overcome in the

Middle Ages for the convocation of Councils and for the Diets of the Holy Empire, in which the representatives of three hundred and fifty States had to be seated.

But if there be somewhat new and extraordinary in such an institution as we propose, we may reflect that the familiarity, so to speak, which exists between all civilized nations, is itself not very old, being the effect, most especially, of their multiplied commercial relations, and of the laws and customs of the one country becoming now more similar to those of another, than they ever formerly were.

Secondly, it is beyond all controversy that, in such assemblies, to each of the parties so congregated belongs a perfect equality of rights, and hence what is termed an absolute individual *veto*, except in the deliberations with respect to which those assembled have themselves agreed that the majority of votes shall prevail.

It is true, however, that if such individual *veto* suffice to annul the decrees and conventions to which it is sought to attribute the authority of the entire synod, that does not hinder the representatives of the other States remaining in accord with each other from promulgating and putting into effect their own agreement, in their own name, and so far as they are concerned ; in the same way as, to cite a modern instance, was done at Vienna also, when the Spanish envoy refused to assent to and subscribe the Final

Act of that too famous Congress. And in another Congress, that of Verona, which met eight years later, the representative of England persisted in disapproving the principle of intervention, as all his colleagues decided to understand and practise it. The dissentients can either simply refuse to vote and stand apart, or they can protest more or less forcibly against what is agreed upon; or lastly, they can oppose by every means the execution of the others' deliberations.

But, in such an assembly as we have contemplated, the negotiations and conclusions would be extremely difficult, and unanimity of the suffrages impossible. This of course will be the objection of practical men. We think their remark is much too unqualified on this matter. Let us here carefully distinguish what is the object of the deliberations; for if it be this, to bring forward one or several general maxims of law, the controversy and the vote will take a widely different course from that which they would adopt in discussing some particular and special facts, or some delicate and arduous application or execution of principles.

It is not difficult to obtain a common consent to general maxims of law which appear tolerably remote from any actual and immediate application; and the righteousness of which is most clear and evident, or the advantage of which seems calculated to be universal without fear of any exception. So we

should think the proposition submitted by France to the late Congress of Paris, that before going to war with anybody the mediation of a neutral Power should be sought and tried, would have obtained the entire suffrages of any assembly of diplomatists, however numerous, when it was broached at a suitable time remote from apprehensions or menaces of war. And to quote another example, what State in Europe would refuse to coincide with the others in abolishing, if it still existed, the savage and iniquitous right to plunder a shipwrecked crew? A few years ago, there met together in the city of Lyons certain men learned in the laws and usages of sanitary quarantine, sent thither by most of the maritime States of Europe: and although the subject was not very plain, and gave rise to diverse obstinate opinions, they yet all agreed in certain pragmatic decisions in common, the utility of which appeared to be general and visible enough.

Nor does the expressed consent of all the States to any sentence, becoming notorious and solemnly invoked, prove to be a vain ceremony, but bears with it a sanction of profound moral efficacy. We cannot therefore but most especially praise the diligence of England in having procured, on every occasion, the special and loudly manifested consent of all Europe to the principle which declared the negro slave trade unlawful and abominable.

But wherever, in the case of principles and opi-

nions less evident than these, or of which an excessive use is likely to be made, there does not occur, in the meetings we have in view, the approbation of all, but rather the dissent of several, it should give us rather satisfaction than any annoyance. Because, as we have seen, any mistakes made by international law produce vast and protracted mischief in their effects; and on the other hand, the dissent and protest of one or two parties may be neglected and forgotten, but not the disapproval expressed by many.

In any case it would be requisite that, in the subjects talked over and discussed by diplomatic meetings, they should distinguish, better than they do, the right from the fact, the specified case from the universal principle, and practical resolves from the decisions of science. For it not seldom happens that they all agree on the principle, and after that they disagree on the application. And, we repeat, the public and reiterated confession of principles is not useless among the nations. Perhaps it might sometimes be found that the secretaries of the Congress had an extremely difficult task, enjoined by the necessity of signifying and defining the maxims of law side by side with practical resolutions which correspond but too badly therewith! What sort of a preamble, for instance, could they have put to the treaty of the 18th May, 1815, between Prussia and Saxony, by which the latter was forced to cede so

large a slice of her territory? If they had there written down, that men pass at once under the dominion of him who has liberated them from a foreign yoke, and that their own desire and inclination have in the eyes of justice no importance, the moral sense of men would have been indignantly provoked at it: and if they had expressed the contrary, then such a dissonance between the premises and the consequence, between the principles and application, would have seemed too monstrous and ridiculous. We doubt not the dexterity and the exquisite art of diplomatists' pens in adulterating and mutilating the truth; but we cannot believe they would ever succeed felicitously in deceiving many persons about absurdities so enormous as we have instanced. Moreover, it appears to us, modern politeness and civilization demand that all simulation and feigning should be absent from great international acts; and we should no longer have to read, as we do in the convention just now cited, that "his majesty the King of Prussia and his majesty the King of Saxony, animated by the desire of renewing with each other their ancient ties of friendship, have appointed plenipotentiaries" in order to discuss, settle, and subscribe a treaty of peace, &c.; whilst poor King Frederick Augustus did really go into that treaty with the same sort of desire and friendship that a snake feels when drawn by the spells of the enchanter, and his heart was fretting with a keen, though impotent anger!

Wherever the subject of the Conferences, however, turns entirely upon particular facts and incidents, the Potentates whom they most specially concern will certainly have much difficulty in coming to a dispassionate and impartial decision upon them. For this cause, when the whole European family shall concur in pronouncing an opinion upon them and in trying to reconcile discordant interests and views, shall we not find in this a good and sure earnest of sounder wisdom and exacter equity ?


In the Congress of Munster, which preceded and facilitated the Peace of Westphalia, in that of Ryswick, and in another at Teschen which happened in 1779, more than one Power intervened solely for the sake of conciliation and peace. Now what harm would be done to the world if, instead of one or two, the mediators were many ? Sure it is, that the agreements thus procured and consolidated by the intervention of the whole of Europe would so increase in authority that they might preserve themselves intact and durable as much as any human things can be so. But whatever we may think of this, it remains always an axiom of international law which cannot be impugned, or rather it is involved in an axiom of universal law, that nothing can be justly or legitimately concluded in diplomatic negotiations when all those who are interested in the affair are not convened to discuss and to deliberate upon it. Yet this axiom, though it is accepted of logical necessity by the moral sense of the peoples, has not yet made

its way into the ordinary practice of the protocolling of Congresses. It has on the contrary never yet been explicitly recognised, that we know of, or written in any convention or in any treaty. In 1821, Austria, Russia, Prussia, and France decreed at Troppau and Laybach about the affairs of Italy. But excepting Naples, the representatives of the sovereign principalities of the Peninsula were not present there, although it might have been done with confidence and the certainty of having them something more than yielding and obedient. But the Great Powers would not concede this jurisdiction to the minor ones, and Naples herself took part in it not by right, but by the gracious invitation of the Allies. In the Treaty of London, in 1844, the Five Powers concluded a just and holy convention against the wicked traffic in negroes. But was not this an occasion for enabling all the maritime Powers of Europe to sit in frank discussion and deliberation together? How can it be shown that this was not a matter specially connected with their interests?

And we observe, that protocol of Aix-la-Chapelle, which has more than once of late years been cited, that one which was ratified by each of the Five Powers in 1818, contains nothing in the least answerable to this true axiom we appeal to; for that protocol has only in view the case of one or more States which invite the Five Great Powers to occupy

themselves with the interests belonging to the said States.

Nevertheless, we repeat with the greatest possible force of conviction, and with the deepest feeling of the justice of what we say, that whenever the territorial or political ordering of Europe has to undergo in any chief part of it an important alteration, it is a manifest injury to exclude any State from joining in the controversy and deliberation along with the others, if it be thought to prevent war and confirm peace, or if there be hopes of setting up a barrier against insurrections and revolutions by means of a Congress. What ! is it your pleasure, we ask, that the present order and disposition of territories, boundaries, institutions, and leagues, shall form an essential part of the common public law, and shall be received and religiously observed by the peoples ; and then when it becomes seriously deranged at any point, do you pretend to make yourselves alone the judges and menders of it, and are the majority of those who assent to and obey that order to be set aside ? You, who are the stronger, may risk but little by living *ex lege* after the manner of the Cyclopes. But to acknowledge the law, and yet proceed against the law, is what nobody can be allowed to do ; and the Athenians spoke more reasonably when they coolly replied to the complaints of the Eginetans : “ The law is a thing for the feeble, not for the valiant and strong.”



We have here, however, to confront the plea above alleged, of the impossibility or extreme difficulty of arriving at any agreement based on reason and wisdom, by augmenting excessively the number of the parties discussing it and the variety of their opinions and interests. Now let us examine this plea. The variety of opinions by itself would not, as we believe, hinder a final conformity; for where the discussion is of mere questions of fact and resolutions quite as positive, the divergence of opinions cannot prove to be inflexibly obstinate, but must give way a little at a time, through a pacific and patient discussion, daily assisted by all the European press. On the other hand, the variety and discrepancy of opinions tend to this, that the subject is looked at and viewed in all its aspects and relations; and hence we have a determinate judgment which is not partial and inadequate, but which involves the substance and true foundation of the question.

The cause which in a far greater degree disturbs and renders difficult the discussion, is the variety and conflict of interests, and we may even say of passions, that are involved. But this conflict is generally more brisk and angry between a few and formidable contending parties, than amongst many, who have less interest in it and feel less passion about the matter. All those who feel that they have little cause or reason to cast themselves pertinaciously

on either side, and to drive things to an extremity, become the more capable of understanding what is the best mode of conciliation and accord, and are much less obstinately bent on looking solely to their own profit and disregarding the interests of others. Along with the desire of a political Congress, a certain moderation, or a disposition to yield some point of the contention, does enter into men's minds; and this disposition will be increased and confirmed by the influence of those who are but slightly interested and excited, and to whom, on the contrary, peace, repose, and friendship between the peoples must seem more urgent. It may be added that although, by multiplying the plenipotentiaries, opinions are often multiplied and the variety of interests increased, yet the love of rectitude, and respect for principles, and the sentiment of common justice are multiplied perhaps quite as much; because these are things inscribed by nature in the hearts of men, and although a cold and calculating policy may cancel them in the few, it cannot do so in all, or even in many; and if they but remain there not deeply engraved, they appear to become more distinctly marked out when those who must, for innate shame, confess and manifest them to each other, are more in number.

If, with all this, Europe should not succeed, in a Congress and by a treaty, in agreeing with and pacifying itself, it would have to be said that the existing condition of opinions and minds did not

admit of it. We deem this open dissension preferable to a partial and dissembling accord, imposed upon the will of the feeble, and leaving in substance intact every occasion of more approaching convulsions and conflicts. On the other hand, let our readers not be weary of repeating, that both the material and moral arrangements of European law would acquire their greatest or perfect efficacy, if they were universally and in the most notorious and solemn manner approved; and this would be still more the case if all the governments, in some discreet measure, partook of an explicit and evident popular vote.

Perhaps it was by these and similar motives that the Prince de Benevento was animated, when he did not hesitate in the Congress of Vienna to propose a fair and secure discussion to be common among all the representatives, small or great, who were there from every part of Europe assembled.

These things we have thus minutely expounded, since it imports us much to show, and to prove, how it is never impossible to perform what is just amongst men. But this does not forbid us to recognise, that the facts have until this day been, and that they will perhaps for a long while yet continue to be, very different from our conception. We know not when the Pentarchy will choose to be made equal in their votes with the small States, and for their wills to be subjected now and then to the counsel and suffrage of the plurality of them. Per-

haps on that very account they will evade Congresses, and use every artifice to render them abortive; or, perhaps, by necessity and for convenience being fain to accept such universal Congresses as the law enjoins, each of the great Potentates will intrigue so as to obtain for himself from among the minor States a species of *clientela*, and make his appearance at the meetings like a splendid planet, garlanded with many satellites. The most celebrated Congresses of the last two centuries and the first half of the present century were really all governed by a very few plenipotentiaries, whose respective monarchs prevailed in force and influence over the others. At Ryswick, in 1697, the negotiations being immoderately protracted, France and England concerted separately the articles of peace, and the other Powers represented at the Congress, somewhat constrained and somewhat persuaded, adhered thereto. The same happened at Utrecht, and the same again at Aix-la-Chapelle. In each of these Congresses there were but a few conferences between all the representatives, but there were many and effectual exchanges of notes, and partial conventions concluded without the participation or privity of the others.

There are indeed some who would deny all authority and importance to Congresses. These oftenest serve, they say, but to publish and solemnize the things already preconceived and fixed in the minds of those who have met, or they result only in a partial

and insufficient accommodation, which leaves the grave political problems that had been submitted to examination and arrangement, substantially untouched. The diplomatists in Congress, with a strange narrow-mindedness, appear to lack the ability of initiating and creating any great thing; they patch up and stitch together, for want of courage rather than of sagacity, and just like the tailor in Dante—

“Che ha l’abito dell’ arte e mai che trema.”

These censures, if we may be permitted to mitigate their harshness, cannot be entirely denied. Be that as it may, we have already observed, and it will be useful again to remark, that if it is very desirable for princes and statesmen to confer together to prevent wars and revolutions, or to stop their course and restore peace and quiet to the world, it is still more salutary and profitable that their most frequent and threatening causes should be appeased and removed. And for this it is chiefly necessary that the order of kingdoms and their reciprocal relations should be based on the eternal truths of liberty, equality, and justice, so that with these truths conventions and all manner of accords between the peoples may be imbued, and so that the authority of treaties, as being wholly founded on reason, may not appear violent or grievous to any.

The law, since it is always incorporated with fact

in the world, cannot rectify its course and settle its intrinsic perturbations; except gradually, by successive reforms and by continual transitions towards the opposite of those powers and emotions which have thus affected it. At any rate, it will be the endeavour of the wise and good to avoid all excesses, and to comply with the rule of opportunity and compromise. But we cannot set foot securely along this road of temperate reforms and innovations, unless, to the eyes of honest and sensible men, the clear light of those truths, which relate to the subject, is intellectually radiant; since everything has its commencement in ideas, and proceeds from the coincidence or the unity of ideas in men's minds. This chapter must therefore be wound up with an orderly recollection of the cardinal maxims which our thought has so far fallen in with, respecting international law. And as it is very serviceable for the strengthening and guard of a city to hold frequent reviews of the soldiery and to see them arrayed under their proper banners, so it is of great advantage to science often to call out and parade its few doctrines, mustering with the ensigns of principle; although we do thereby incur some risk of iteration, for which we beg our reader's pardon.

We have said then as follows:—Every people is self-ruling; or, in other words, every true State is free and inviolable with regard to all the other peoples and all the other States.

Likewise, it is inwardly constituted with a certain natural and fundamental liberty, the exercise of which it can renounce no more than temporarily, and with sundry limitations.

Every true State is informed by a common will and a certain substantial unity of thoughts, intentions, and affections. That people remains, therefore, foreign to another, which cannot or will not in any manner compose with this other such a communion and unity.

On the other hand, every free people has the faculty of spontaneously resolving its own autonomy into another larger and better one, offered to it by a kindred or a friendly people.

This solution, although it may have been forcibly caused by a conquest, or fortuitously by claim of inheritance, or by a compact between princes, may become with time a thing accepted by the peoples, and finally invest itself with the aspect and character of spontaneousness. This transmutation ultimately manifests itself by their all openly acknowledging and intently loving one sole country of their own, composed of the parts so merged and confounded together.

The "own country" is, in its moral and political signification, a phrase synonymous with the State, inasmuch as it comprises a close and native association, in which it is at once the duty and the desire of every citizen to realize the highest degree of

social and civil union. Whence also we have seen that this term of patriotism may pass out beyond the hamlet to the civic commonwealth, and from the latter extend to the province, and spread itself to the frontiers of a great nation occupying a vast territory.

This resolution of several States and several native countries, into one, which is common to several provinces and populations, is capable of different gradations, and may appear under so many mutable and transitory forms, as there are conditions intermediate between dwelling isolated by one's self, and dwelling joined with others by a federal law, or by an absolute unitary law. But in all these forms should be found the characteristics of liberty and spontaneity; and they should ultimately result in composing either several States or one, but equally self-ruling, that is to say, in the same manner independent of all outward force and authority.

Few and simple are these doctrines, as it is the habit of science to be, when it rises to the clear and distinct comprehension of its own primary truths. It is only wanted for them to pass clearly and distinctly into the minds of the multitude of cultivated men, and there to increase the patrimony of that which I have called the common science, whose brightness does not dread the shadow of a sophism, and whose dominion is not shaken by academical controversies. These doctrines firstly invigorate and

enlighten public opinion; and with this they then travel round about the civilized world; and the nations live beneath the presidency of invisible Amphictyons, whose judgment and whose decrees the mightiest are scarcely able to resist, but with a presentiment that one day they must succumb.

CHAPTER VIII.

TWO LEADING MAXIMS OF THE VIENNA CONGRESS.

RECOMMENCING now, with better certainty, our investigation of those leading maxims of the Congress of Vienna, which have for the space of half a century exerted so much influence on the government and happiness of the peoples, we have to observe, that although it does not occur in any act or publication of that Congress that a very explicit profession of the divine right and feudal prerogative of monarchs is to be read, it was most certainly understood in many of those acts, and they all concurred in deducing from it its consequences and applications. We cannot otherwise explain or interpret the conceit which was held as an axiom or rather as a dogma, and which was repeated an hundred times over at Vienna, at Troppau, at Laybach, at Carlsbad and Verona, that the sovereignty of monarchs is full, absolute, and perpetual, so that there does not abide one drachm weight of it in the body of their respective nations, which are thus merely and only composed of subjects. Wherefore, all civil guarantees and public liberties, and even the constitutional Charters, whether *octroyées* or not,

whether ancient or modern, emanate entirely from the royal gift and goodness ; nor can, nor ought, in any case or in any extremity the will of the people and of its sincere and lawful representatives ever to prevail against the will of the prince. This was formally expressed by Germany through the sentences and decrees of its sovereigns in 1819 and 1820, and still more amply in those of 1832. "All the powers of sovereignty," they declared, "remain united in the person of the Head." With regard meanwhile to the rest of Europe, the manifestoes of the Holy Alliance, occasioned by the revolts of Italy and Spain, all hinged upon the great need, or as they called it, the sacred duty of saving from every assault and from the slightest infringement the monarchical principle pure and absolute.

Amongst the many consequences which may flow from such an unlimited sovereignty of the monarchs, we shall notice only two, because they are excessively pernicious to the subject flock, and they come strictly within the scope of international law. The one is, that several of these absolute and inviolable monarchs have not hesitated to ask of the princes their colleagues large aid of money and troops, not against their external foes, but against their own subjects, who had risen up one fine day and resolved to terminate their bad Government and to redeem their liberties ; by which force of foreign armies and treasure thus borrowed, the miserable

insurgents were reduced under a yoke aggravated an hundredfold.

The other deplorable consequence of that principle aforesaid is, that in the assemblies of royal advocates a nation can nowise get itself represented, or see its dearest interests protected and advantaged by diplomatic treaties. Of course, the absolute monarch stands alone and single in agreeing or treating with the other States, in conformity with his own good pleasure. And whatever he may arrange with others, is understood to be arranged and consented to by the multitude of his subjects, notwithstanding that the latter may have a mind most averse to the conventions thus effected, to which they must nevertheless submit.

Now with regard to the aids of mercenary soldiery which some princes have not blushed to seek and to solicit, either openly or underhand, against their own subjects, we must loudly declare that it is unlawful and ignoble to make such a request, disloyal and no less unlawful to grant it. For how can it not be contrary to every principle of justice that a prince, after having provoked and necessitated the general insurrection of his subjects and lost all power and authority to subdue it, should put the seal upon his tyranny and meanness of soul by inviting foreign armies into the house, and by gravely compromising the independence of the country, or rather beginning its moral servitude?

For what rule can the State enjoy over itself, and what can the prince himself retain, when he is indebted to others for being enabled to reign and triumph?

But they say that the foreign armies come in as allies and friends of the monarch, not as violators of the liberty of the State. One nod from him sets them in motion, another nod sends them away. How then could they be turned to the diminution of that sovereignty for the reverence of which they were employed? In the monarch all the supreme powers are concentrated, by making use of which he contracts with other monarchs amities and leagues, and by virtue of these asks them for soldiers for his own service and advantage. This would be unlawful and wrong, if the arms of his allies were to operate to the damage and injury of a third party, or if they entered, uncalled-for and undesired by him, into the house of their protected friend. But will you pretend that the State has not the lawful faculty of letting itself be assisted and served by anybody or in any manner, saving the rights of other parties? And the king *is* the State, and the State wills that which *he* wills. It is pretended that one Government ought not to interfere in the internal affairs of another. Be it so; but that very maxim forbids the rest to hinder a king from calling into his own house the armies of his own friends, if it all remains an internal con-

cern, and if it in no degree deranges the affairs of the neighbouring States, or rather may easily be proved to benefit them greatly. If the public order of Europe, and therefore the law by which it is informed, hinges upon monarchy, the factions which attack its sovereignty, and which threaten and condemn its existence, ought not to be tolerated. A legitimate king ought, at any rate, to reign, and if he cannot by his own arms, he does by those of others. In general, the peace, the social and political order of all Europe is entrusted in common to all its Governments ; and the principle of non-intervention cannot be carried to the pitch of excluding the universal and reciprocal security of civilized States, dwelling under the same international law.

These specious pleas we have heard a thousand times repeated by the scribes of the Holy Alliance, to legitimize the slaughter which it has made of the inherent liberty of the peoples, and to maintain its leonine patronage of them. Invoking, in a queer manner unheard-of in the world, the name of brotherhood and charity in Christ our Lord, this Holy Alliance did by the sword and in blood thrust back the populations into the hands of odious kings, who had governed them with such brotherly kindness and with such bowels of charity as to compel them to rebel and demand some firm and positive guarantees against that tyranny.

For the rest, how little correctness and solidity

there is in these arguments, or rather sophisms of the cabinets of Vienna and St. Petersburg, any one may see. In the first place, alliances and friendships are contracted by the State, and not personally by the monarch alone; nor will it suffice to say that the monarch and the State are but one and the same thing. We have often beheld that States can do without their monarchs; but these without their States, that is, without subjects and without a treasury, what are they? The tyrant Dionysius was just the same person when he reigned at Syracuse and when he kept a school; but the difference was that, he still commanding when he was in exile, nobody except a few children obeyed him, and even these sorely against their will. But, it will perhaps be replied, we are properly not speaking of the monarch himself, but of his sovereignty, and that is to be confounded with the State. Now that is just what we deny. It has been proved and demonstrated at length, in our first chapters, that never can the State, or let us rather say, the people forming the State, divest itself of a certain innate and incancellable liberty of its own; and hence it springs that from no doctrine whatever, be it specious or true, of the origin and nature of sovereignty, can you ever derive the unlimited and perpetual faculty of commanding concentrated in a single or a few persons. If, therefore, the king figures as the State, it is by way merely of repre-

sentation, and upon the assumption that he expresses the will of his people, whose tacit obedience is interpreted as a sign and as the effect of their real and ready adhesion. But when the whole people rises up and displays a will different or even contrary to that of the prince, where is the representative character of him? where is the fulness of sovereignty? where is, indeed, his identity with the State? Then, those who intervene by force to subject a people to its deposed monarch cannot allege either any compacts of friendship, or requests and invitations addressed to them; because compacts are understood to be concluded with the State, and the invitations and requests came from a man who no longer represents the State. What then? Shall we suppose that the people demands the employment of arms against itself, and wishes to be killed, like those among the ancients who begged a freedman or a familiar to run them through the body with a sword? As for the wider argument of preserving the peace and the fundamental institutions of Europe, we shall have more to say to it upon another suitable occasion.

We are not ignorant that it is usually said that the arms thus begged of allies and friends are brought into the State not against the real people, but against a perverse faction, or rather a handful of conspirators, who by their extreme audacity manage to terrify the good and to hold the king himself a prisoner and in

subjection. A strange supposition indeed ! that a handful of factious men should prove to be so powerful as fairly to dominate over the State and tie up the people's hands so that no rescue is possible except by the intervention of foreign armies ! But if those who are well-disposed are devoid of zeal, and if the multitudes are thus cold and slothful about the public safety, they must have been very ill governed, educated, and taught. And we cannot understand how there could arise amongst them a race of their own blood, so stout and so audacious as to depose their prince, get possession of the State, take the command of the military, and preclude the people and its king from all hopes of delivering themselves by their own forces. Nevertheless, we may admit the supposition. Not that it appears to us well and truly proved, in those cases for which the Troppau Congress and others following that one pretended to provide ; but it is not to be deemed altogether impossible that in the abundance and infinite variety of places and times it may be realized. Then the intervention of foreign arms will certainly not be effected in the name of the absolute sovereignty of the prince, or because an invitation or request on his part is equivalent to one made by the State and the people ; but instead of that we shall have the State and people within its own bosom profoundly divided in thought and deed ; on the one side standing the prince with his many adherents

mute and dismayed ; on the other side, imperious and suspicious, the factious innovators. The intervention will then take place for the same cause as we may sometimes meddle in a civil war, inclining to one or the other of the contending parties according as we may judge reason and equity to be on one side or on the other. But in this point of view, the problem, so to speak, is quite altered. The fact, with its special contingencies, abides the same : but the principle, for the sake of which it is reputed that the interference of a foreign force may take place, is quite different. We do not scruple, however, to deny the lawfulness even of this kind of intervention, and we believe it to be in every respect injurious to international justice and liberty ; of which we shall discourse a little farther on, when we shall have to indicate all the arguments for, and applications of the principle of intervention. Let it be enough for the present to have settled, that the heads and rulers of the State have no power to call in against their own subjects the violence of foreign arms ; because those personages do in that case no longer represent the nation, and cannot allege the absolute fulness of their sovereignty ; which has its necessary limits in the innate and inviolable liberty of the social body, and also in the accomplishment of that end which is the cause and origin of sovereignty. We need hardly say, that to submit the State even for a temporary occasion to the force of another, is

an enormous crime, if it be true that, in the order of political things, its outward autonomy, or what we call independence, must be esteemed its greatest and most precious good.

This interference of foreign arms in the internal affairs of States can in no manner, and under no title, be allowed or tolerated. We therefore detest it with the same strong feeling and resolute judgment even when it occurs in favour and for the service of a people against its tyrant. Such a supposed use, however, does clearly convert itself into the case just now cited of a civil conflict, since a prince or any other sort of head or governor cannot by himself alone oppress a whole people, or likewise alone resist a general insurrection. The foreign army would therefore either help the popular side against the royalists, or there would be no need of it. Indeed, James II., for example, did not stand alone against the insurgent English, for he had with him, and for him, those who were attached to the House of Stuart, and the Catholics of that island, as well as of the Continent. The Dutch troops arrived, and the party which was certainly the most numerous and enlightened party in England, kept the upper hand. Now even if it be demonstrated to us that the whole of the glorious British civilization had its cause and sustenance in that violent intervention of foreigners, we shall abide firm by our principle, that the Orange side, and William their chief, did not lawfully, or

according to the reasons of right, use that armed intervention, unless indeed it can be proved by many and notorious facts that, on the other side, the Catholic potentates, and especially France, were not restricting themselves to moral influences alone, and to a few acts of partiality and friendship, but were succouring the Stuarts, though in an underhand way, by means of every kind. Then, putting aside for the present some parts of the subject not yet sufficiently investigated, let it be held beyond doubt that where foreign forces are called by the prince into his State, not for the defence and outward security of his kingdom, but to suppress his subjects' revolt, and to confound his own person with that of the State, so that the people shall have no right, but that he shall have an absolute and inviolable one, such a calling in of foreign arms is not less unjust than cowardly ; and this is perhaps the most aggravated matter of accusation that can weigh upon a crowned brow. And it requires not a mind of divination to behold the certain presage that, at no very distant age, this armed intervention of which we are speaking will appear one of the foulest blots upon modern civilization.

It often happens with even the clearest and soundest of principles, that in the countless variety of applications to be made of them, some are uncertain and confused. But their evident truth should not be deemed at all shaken by this. On this subject of

ours, there is a case presenting itself to the mind, which is not very easy to be defined, but of more than ordinary importance with regard to the general liberty of the peoples. That case is this:—A prince by means of alien soldiery which he has enlisted in his pay, having for some time past drawn them from several foreign countries, first robs his subjects of their liberty, then continues to scourge and torment them. Now does not this, we ask, amount to the same thing as if he had obtained from another prince that subsidy and intervention of foreign arms which we have pronounced unlawful? He himself has made himself alien to his people; and that band of mercenaries composes, along with him, another State within the State. Wherein would they differ from this, if they were a predatory horde coming from afar like the Arabs or the Mongols, with their chieftain at their head? We are certainly not a little inclined to view the matter in this light, as though in our own days the imagined case could really occur, which often did occur in the Middle Ages, when it was usual to hire a guard of mere soldiers of adventure, fellows devoid of faith and honour, debauched in their habits, ready to protect or to destroy human life according to their stipulated price and contract, under such an establishment as, for example, the Duke of Athens did once maintain at Florence. Assuming, then, that there be now a country in which this may actually take place, to the extent

we have here described, we have no hesitation in at once concluding that for others to interfere, even by arms, in favour of that people, and against the mercenaries who oppress it, will not be an illegitimate act; if the maxim is to remain of general acceptance that every State has the discretion and power of so far taking part in the affairs of another as to prevent the usurpations and violence which foreigners are practising against it. On which account, it must be seen, this point also resolves itself into the more general question of the right of intervention, which we shall presently consider.

We now pass on to the other grievous consequence of the Holy Alliance, before referred to, with its interpretation and application of the monarchical power; namely, that if the royal power is absolute, the representation of the State consists wholly and entirely in the person of its head; and that foreign transactions are altogether to be managed by his will, even though the will of his people be different and adverse to it. This appears to us a very perilous maxim, and one that is commonly based on a great legal falsehood. But in the opinion of some jurists, we should add to it that the Government of one State is nowise obliged to inquire into or recognise the legitimacy of the Government of other States, and that it only imports it to ascertain whether or not that Government can preserve itself independent master of its own actions, and offer valid guarantees

of the stipulations and undertakings it has to make. Hence has arisen the practice of England, and more especially of America—not to make any kind of distinction between Governments existing *de facto* and those existing *de jure*, but to look only to their permanence and ability.

We can very well understand how a commercial country, desirous to have intercourse and traffic with peoples which are not highly civilized, or even quite barbarous, may therefore look to the actual heads of their respective Governments, and be content with recognising the fact that they are obeyed or possess sufficient power to maintain their compacts by authority and by force. But it appears neither advantageous nor proper to observe the same indifference towards those civilized Governments, of which we ourselves are a part. Certainly, if it be the intention of diplomacy to construct durable and fruitful works, and to avoid, so far as possible, the causes and occasions of revolution and war, it ought not in its conferences and arrangements merely to limit itself to recognising in the several advocates and representatives there the validity of their mission, the width of their mandates, the counter-signatures, the seals, and the other formalities or ceremonies about which the most serious publicists have written so minutely and lengthily. Instead of this, it appears to us that it would be of much advantage to consider whether the representation be sincere, or simulated and facti-

tious ; we mean, whether the conventions and treaties emanate solely from the prince's mere authority and wish, or correspond also with the interest and will of the people whose ruler he is. For in the latter case, they will be legitimate and equitable, as they will be genuine and spontaneous, but in the other case, when so much cannot be said for their sincerity, they are in jeopardy of falling through. It is indeed natural and quite right for the English, American, Belgian, Dutch, Sardinian, Swiss and one or two other peoples, to feel and acknowledge that they remain tightly bound by the engagements and treaties in concluding which the people itself has concurred by means of parliamentary resolutions, the criticism of a free press, and the slow but assiduous force of public opinion. But where there does not exist a shadow of all this, and where the will of an absolute king is alone omnipotent, frequently making compacts and bargains for his own profit, different from and opposed to that of the majority of his subjects, no inviolability and faith of treaties will remain sound in the day when chance, or the overflowing of evils, or any other cause, kindles an inextinguishable flame of rebellion.

What then would you have ? that no conventions or treaties should be made with any absolute monarchs, and that their ministers should not be admitted into any Congress ? or that they should be required to bring with them some proof and attesta-

tion that they likewise represent the nation? or lastly, that both, the king on the one hand, and the people on the other, should send their own plenipotentiaries, so that they would tilt against each other, all round the green table of the diplomatists, not only with conflicting words, but with blows of the fist and dagger? Any such courses as these would be alike ridiculous and impracticable.

Nor do we demand, nor do we approve these courses. We only desire to suggest to the minds of publicists how unseemly a thing is that legal fiction of assembling in a Conference, as has more than once been done, the ambassadors of a State who are and who pretend to be nothing more than agents and ministers of the sole will of its monarch. We desire to have it perceived and confessed, that where the people do not partake of and adhere to the doings of their heads and rulers, those ties of intimacy and fraternity which the Holy Alliance sought to form are reduced to a friendship and brotherhood of the monarchs alone, specially intended to uphold and to corroborate the rights and privileges of their kingship; of which the Frankfort Diet is an ever-speaking witness. Lastly, we desire that some provision should be made for that extreme but not impossible case of a State the moral unity of which has been broken, and in which the prince does not even in the least represent his people. In that case, why should not the free and civilized Governments

join with each other, not indeed to interpose by force, but to deny that prince admission to their common amity, to recal their ambassadors from him, and deprive him of a part in that mutual guardianship which the code of the European nations secures to all those who will accept and observe it? To do this we must, it is true, abolish the disastrous doctrine of the *absolute* right of princes, and inscribe in our code some such words as these:—The European family is composed of States, each of which is inwardly and outwardly self-ruling, and each of which is therefore founded upon a certain infeasible liberty and upon a certain unity of minds and hearts, which nobody, without the terrible guilt of *lèse-majesté*, can presume to break.

By the maxims of the Holy Alliance, a prince who has been deposed by his people, and who is no longer master of a yard of the territory, continues to represent the State which he governs no more; the envoys whom he maintains at other Courts enjoy their former authority; and he has a right to sit and to deliberate in the diplomatic Congresses, from which, meanwhile, the envoys and representatives of the emancipated peoples are constantly excluded.

Now, here is a question to be inquired into and resolved simply by those who do not profess the mystical and much-abused doctrine of Legitimacy. The question is, when should the enfranchisement

of a people, and the downfall of its prince, be reputed to have been consummated? To affirm this fact fairly and with certainty, the flight or expulsion of the prince will not suffice, because he might, without resorting to foreign arms, reascend his throne, through the spontaneous wish of his own subjects, confidence being restored in them, or their mind and purpose being somehow altered. The course of these events varies according to place and circumstance, and an absolute or universal opinion upon the matter can scarcely be pronounced. The Stuarts were twice cast down from the throne of England; once, with some probability of regaining it, but in the other instance, with a common persuasion that the crown of the three kingdoms would never be recovered by them.

From this it may be concluded, that when a prince does not retain numerous and potent abettors or partisans in the State, or a manifest probability of being recalled to the throne, it is a fiction not less unjust than ridiculous to continue to receive his envoys in an official form, and to give his plenipotentiaries a place in the Congresses of Sovereigns. And it is no less unjust to interpose an excessive delay in the act of formal recognition extended towards a people which has fully and securely reclaimed its liberty, or thus to persist in excluding it from the common agreement of good-will and friendship among the nations.

Nevertheless, as we are here treating of an occurrence which is capable of being very diversely estimated, it is to be understood that such public and solemn formality of recognition may be delayed more or less by one or another Government, according to their respective measures of wisdom, prudence, or advantage in the case.

We cannot refrain from mentioning that it has appeared to some publicists, that the sovereignty of a prince remains alive and intact so long as he possesses in the State any piece of territory, or at least only a fortress, wherein to hoist his banner. Waiving any discussion as to the truth and juridical importance of this supposition, it will be enough for us to remark that it is one which looks to a fact that must necessarily be transient, wherever the prince is not a foreigner, and wherever he cannot avail himself of foreign arms. Moreover, this case comes within the class of intestine contests and civil wars, with respect to which it will be decided by us farther on, that no armed intervention of other peoples can ever be lawful. We do not therefore deny that, whilst the conflict is going on, and pending its uncertain issue, diplomatic relations, agreements, and appearances, cannot be kept up such as they were before the breaking out of the contest and of the war.

In the ordinary course, in political Congresses and the stipulation of treaties, none may interfere except the official representatives of the States re-

cognised as sovereign ; and these are they which keep their own envoys and consuls at the residence of foreign courts and Governments. These, after a certain exchange of letters and official notifications, assemble with more or less pomp and honoured by prescribed etiquette, just as the escutcheon and flag of their nation is honoured in a particular manner. Now it should be remarked that from such Congresses are excluded upon this account the representatives of all tributary populations, and of those over whose country extends the suzerainty of any great monarch. The great vassals of Turkey, and Egypt itself, are in this situation. The representatives of peoples under the protectorate of any great potentate, as in the case of the Ionian Islands, are also excluded. Similarly, there are no representatives of any colonies, however vast and populous they may be. All those who live under a foreign government, like some of the Greeks and Italians, the Hungarians and others, cannot hope to send ambassadors to a Congress. In the same manner are shut out from it also those provinces, which although they have not alien rulers upon their necks, have not yet obtained their just equality of rights and functions in the State, which was formerly the case of the Irish in the United Kingdom of the British Isles, and of the Waldenses in Piedmont. It will appear from this catalogue, how large a part of the civilized European world is defi-


cient of any proper and direct representation in the councils of diplomacy. Shall we say that those States, upon whose caprice they are dependent, are their official representatives? This is legal enough, certainly, in form, though unjust and oppressive in reality. What then, shall we provide room in the Congress for direct representatives of those kinds of provinces and populations we have just reviewed? But in what convenient manner could they be chosen? And how could all this be reconciled with the sovereign rights or even with the dignity of the respective States? We feel the extreme pressure of these difficulties, which seem to us the very contradictions of public law; and certainly, it is not for the skill of Congresses or of diplomatists to obviate them, although we do not see the impossibility of finding some expedients and provisions, whereby any province or people which felt itself oppressed and injured should have a method of conveying to the Congress an open declaration of its grievances. For the present, our only aim is to extract from the inmost essence of the subject some dictates of international justice, to which if the peoples as well as their kings will continually look, their proceedings will by degrees most certainly approach and conform thereto. Let but all of them be persuaded of this truth, that in the Congresses of potentates, all the representations ought to be sincere and sufficient; and therefore it behoves that

the peoples be there represented not by a legal fiction, but in full reality; and hence it is needful that in every quarter be realized that which we have already said, namely, that Governments only which are furnished with their full outward and inward autonomy should subsist in the civilized world; so that vassalages, tributes, and protectorates all must, by little and little, disappear; so that the compulsory linking together of peoples of adverse disposition, with all inequality of franchises between them, must also disappear; and lastly, so that the strange pretension of princes, to identify the whole State merely with themselves, must be put away. We find ourselves here again and again going back to the same things and recommencing with the same principles. But we trust those readers will forgive us who can appreciate the usefulness of thus remarking how the entire machine of international law, and the task of altering and amending it, do turn and hinge upon a few most evident axioms, the virtue and the influence of which, like that of the blood circulating through every limb of the human body, pervade and move through every portion of the Law.

CHAPTER IX.

THE RIGHT OF INTERVENTION.


RETURNING now in our discourse to the Congress of Vienna, and to the others which paved the way for it, and to those which followed it, we have to remember how Austria, Russia, and Prussia, the three formidable heads and authors of the Holy Alliance, did in our opinion fall into the very same excess of pride and presumption, which they reproached in Buonaparte, and esteemed themselves more than capable of remoulding the world, and of putting it just in the way they would have it. And since the world gave some emphatic symptoms of indocility, they resolved to exert over all Europe a novel and singular sort of superintendence or censorship, quite incompatible with the natural liberty and independence of the peoples. It was thus that they thought the better to realize that Christian fraternity and intimate friendship which they had stipulated and decided upon ; it appeared to them quite an Evangelical affair to perpetuate and extend the absolute dominion of kings, or rather to convert the universal aristocratic order of monarchs into a close oligarchy like that of the Council of Ten



or Tribunal of Three at Venice, but with never a change of persons. In this manner it was ordained that Austria should rule of her own accord the minor Governments of Italy, and should, jointly with Prussia, hold the peoples of Germany under the rod; whilst Russia, on the other hand, fixed a tighter curb on all the Slavonic races, and spread her autocratic influences over all the rest. What else could France do, or rather her Government, admitted into this league by the conventions of Aix-la-Chapelle, except to flatter her new friends, and to thank them for the incessant labour they undertook to destroy revolutions? England alone, having returned to the liberal spirit of her own institutions, undid somewhat the ties which had joined her to this league.

With these views and purposes, firstly the Congress of Carlsbad was assembled, and the internal affairs of Germany adjusted; then they met again at Troppau, at Laybach, and Verona, to suppress the insurrections in Italy, Spain, and Portugal. In the protocols of these Congresses, even Turkish oppression is found to be legitimate, and the insurrection of the Greeks was severely blamed, as having been promoted, they said, and fomented by an accursed spirit of subversion and rebellion, which appeared everywhere the same, and which the Allied Sovereigns would suppress everywhere with inflexible vigour and severity. Secret societies, the only

means of resistance that were left, swarmed thicker than ever and covertly spread through every land ; against which the Holy Alliance established a system of police, likewise secret and covert, sharpening to the utmost the base and fraudulent artifices of espionage. In this way they believed they could at any moment feel the pulse of Europe, and, like a very inexperienced physician, they did not perceive that they were still mistaking the symptoms for the malady ; but whilst they doctored the former, the latter grew more intense and became incurable. Their chief concern was to replace the princes, by armed intervention, in the possession and enjoyment of the full monarchical power. After that, they fancied every evil would be remedied, and the permanent and profound causes of revolts would be removed. But never had the world beheld such excesses of royal power, and never was the independent rule of the peoples menaced or violated with greater boldness, or by a vaster and better compacted conspiracy of forces. France herself had already been drawn on to execute the decrees of Verona beyond the Pyrenees, with those glorious arms of hers which had repeatedly saved the Republic, and which had diffused the principles of 1789. In all Europe it was England alone which seemed to adopt other maxims for her guidance, yet even she was constrained but timidly to declare that she did not approve of what was being done.



If it had been possible for the liberties of mankind ever to perish, the Holy Alliance certainly spared not to give them a mortal blow. The absolute authority of princes had been converted into a cause more sacred than that of religion or divine worship; since, by the Treaty of Westphalia, it had been agreed upon between civilized nations that for the sake of religious faith no States could have any title to intervene by arms and warfare.

It seems, however, strange to say, that whilst thus all over the Continent the arrayed might of military battalions prevailed, even the pens of thinkers did not take the right way to lead to the victory of the truth. They replied to the exaggerated doctrines of monarchism with those of the "Contrat Social" of Jean Jacques Rousseau, which are still more exaggerated. What serious publicist meantime came forward to define clearly the nature, terms, and application of the principle of intervention? We are not aware of any one. Yet while writers generally acknowledged a natural and original autonomy of Sovereign States, they were obliged to allow non-intervention as a general and constant maxim, and ascribe to the contrary principle an exceptional character. Notwithstanding this, reckoning from 1792 subsequently, that is, from the war manifesto which Austria and Prussia published against France on account of her internal revolutions, it might have been thought, on the contrary, that

the right of intervention had become generally and constantly the normal practice.

It appears quite evident, that if Europe had esteemed inviolable, as it is, the original self-rule of the nations, and their faculty of disposing, each at its own good pleasure, of its own domestic affairs, the dreadful Republican and Napoleonic wars would probably have been spared to the peoples, who really did not want to go through them. Perhaps also the greatest and bloodiest blows of the French Revolution would have been spared, since most writers agree in admitting that they were partly provoked and to be excused by the extreme necessity of defending their native territory, and of avoiding the instant menace and danger of being carried back to the arrogant privileges of the *seigneurs* and to the infamous sway of the royal courtiers and concubines. It might have been that the whole of Europe would have quietly and peacefully arranged itself in tempered and parliamentary monarchies, by the force of ideas and example. Some, on the contrary, will attempt to show that the tremendous conflict which occurred, and which has not yet quite ended, was at any rate an inevitable one, and necessary for the new birth of our old worn-out Europe of that day. We, cheerfully acknowledging that Providence does ever exercise its divine and ineffable art of drawing good out of evil, are yet firm in believing that the right and guiltless ways which are taught by reason

and equity would at all times issue in a greater and a speedier benefit, and in one procured and maintained with less cost of pain and of destruction.

Be this as it may be, there is one thing which in our days is becoming most clearly proved, and that is that, in the same measure in which the idea and practice of liberty expand amongst men, must surely grow the respect and jealous regard, I might almost say the religious reverence, which is to be felt for the outward liberty and independence of peoples. It has therefore become, to our thinking, the bounden duty of wise and enlightened publicists not only by every art of persuasion and in every way to inculcate the fullest and most scrupulous observance of the independence of States, but also to search out and scrutinize one by one the very rare instances of legitimate intervention, and peremptorily to exclude all the others which it has yet been attempted to introduce amongst that number.

On the other hand, as the relations between one people and another have become exceedingly multiplied, and their mutual examples and influences more potent, through the increased efficacy and propagation of ideas, as well as through the approaches and visitings which the peoples are more and more enabled to make to each other, the occasions and pretexts for intervention seem tending also to be multiplied. There are, indeed, some publicists of repute, and Henry Wheaton amongst others, who think it is

impossible to lay down any sound general rule upon this subject. It seems, on the contrary, to us, that unless we be grossly deceived, there are no greater difficulties and uncertainties in this than in any other subject of juridical science ; but that the argument hereupon may be conducted with perfect simplicity, perspicuity, and exactness.

To intervene, in the pure meaning of the phrase, would express the interposition of one or more Powers between two peoples, or else between the contending parties of a single people. And this is here meant of armed or anyhow coercive intervention ; since that which is not coercive, but simply a friendly intervention, does never in any case become illegitimate, but is most frequently desired and acceptable. The modern use of the word, however, more properly implies the interposition of one or more potentates in the internal affairs of an independent State, whenever it may be thought that the course of them is becoming seriously prejudicial to others. And here we should at once take away one case of intervention, which the old jurists thought most legitimate, even when no damage or grievous and lasting injury supplies a motive for it. It is the case of intestine wars having broken out in a nation, on which account Grotius and some other authors with him do not hesitate to assert that the neutral States may freely take sides with one or the other party, and throw into the balance

of conflict the preponderating weight of their own arms.

Now all this we do most resolutely deny, so long as the contention and war break out and rage between citizens of the same State. You cannot, indeed, assist one party with your arms or treasures, without not only becoming an enemy and an offender against the other party, but outraging also both of them in their common and supreme right to have the self-rule of their own country respected and uninjured, and to have its internal condition decided by no other means than by the hands and fortune of its own citizens. And, therefore, if their minds were not blinded by the fury and passions of the civil conflict, the hostile powers should make a truce with each other, and unite together of their own accord against the foreigner who thrusts between them the decision of his sword. But even though the contrary of this be done by them, and the foreigner be solicited and begged by one of the combatants, he cannot, without some criminality, yield to their entreaties and accept that guilty invitation; and so it is unlawful to come to the succour of a king against the insurrection of his own subjects, which is a thing to be looked upon as a case of civil conflict not yet arrived at actual war and slaughter. There cannot remain any doubt about this, if we bear in mind what it is that is called civil war, namely, that fierce contest between

parties of the same people, which, although it runs over into quarrels, bloodshed, battles, and proscriptions, yet does not entertain any purpose of splitting asunder the unity of the State; each one of the combatants, whether a follower of Pompey or of Cæsar, whether Guelph or Ghibelline, esteeming himself a citizen of one and the same native country; for which cause the informing unity of the State, to which we have already referred, though it is tottering, is not yet annulled, and will resume its due form at length, when the rage of civil discord is spent. We are well aware that there are some who pathetically exclaim, that we ought in civil wars to interpose our own sword, for the cessation of crimes and slaughter, and for the love and compassion of our kind. But we reply to these philanthropists that it is allowable for them to use and try for that purpose any kind of pacific offices and mediation, but that only this injurious and arrogant employment of arms is forbidden them; because it is the first point of human compassion to preserve the right, uncontaminated, and there is no comparison in amount between the blood and tears of a few short years, and the infinite, unstanachable miseries which violence and injustice cause to be shed throughout this world.

A very different supposition would be that of a people which has been subjugated, and which, after constantly refusing to constitute and to love one

sole country, along with its oppressor, at length arises in fierce insurrection, and makes a supreme effort to recover its liberty, as we read of the Dutch people against the Spaniards, of the Swiss against Austria and Burgundy, and of the Greeks in our own days against the Moslem. Everybody must perceive that in this case, the question is not one of intestine war, or of the contending parties within one people. According to our definition above given, wherever there is not a moral unity, and an identity of their own country, there are really several States, and not one State; and, therefore, if foreign armies come in to aid the people which justly, sword in hand, demands the autonomy stolen from it, they do not commit an act of intervention, in the modern sense of the word, because they are not violently interfering in the internal affairs of one identical political community, but they are aiding the cause of a nation against its external enemies, a thing which has always been reputed lawful and is quite in conformity with the most rigorous terms of international justice. We should, therefore, decidedly call the intervention of Elizabeth in favour of the Flemings a legitimate one; and that of France and her allies, in favour of the Greek people; and again, that of England in the Iberian peninsula against the arms of Napoleon; and the last one, which is being accomplished in these very days, whilst I am writing this book, and which has

been willed and prepared by Napoleon III., with such remarkable magnanimity, for the salvation of Italy.

We repeat, this kind of intervention has no censure to fear regarded in the view of good international law, excepting special conventions and treaties should stand in the way, which, if they cannot wholly and for ever bind down the subjugated nations, do yet demand entire faith and observance as between equal and self-ruling States. What should be our opinion of those potentates who, in the desperate war that a people sometimes has to wage against the foreigner, cast themselves in with all their forces on the side of the latter, as a few years ago we beheld in Hungary, I prefer leaving for reflection, to expressing it in any language of my own. Let it console us, however, to observe, that very soon this iniquitous assistance was recompensed with disloyalty and with ingratitude; and the nations remain two days in the sepulchre, but they are resuscitated on the third day.

In 1840, Austria, Russia, and Great Britain intervened with fleet and army, to the disadvantage of the Viceroy of Egypt, who was going to war against the Sultan. Shall we call this a different case, or the same case, compared with that of civil war just now under our contemplation? According to the principles settled by us in the beginning of this book, the vassalage of one people to another is not,

in strictness of law, a permanent, but a transitory condition ; and hence it cannot always continue to be proper and legitimate. It meanwhile happens that the vassal State emancipates itself, or else that it completely merges and confounds itself in the other, meeting there with a parity of rights and functions, which cancels the vassalage. Keeping then to generalities, we deny that you can, with entire rectitude, take the field against a vassal State which revolts, and reduce it to its former subjection. For either you must regard this affair as a case of civil war, or else as an effort made by a people which has a right and reason to dwell self-ruling ; and in either hypothesis, we have already condemned the armed interposition of foreigners.

But the four Powers above mentioned were persuaded by self-interest to lend their powerful assistance to the Sultan, whilst a diverse interest moved France to take part with the Viceroy. Peace and the European equilibrium served the former as a pretext for interfering. The latter phrase has become very famous in diplomacy, and has continually supplied it with a web of variegated and delusive texture to disguise its immoderate ambitions and envious jealousies. In most of the wars which have drenched our Continent with blood throughout the last and the previous century, the ordinary reason which the belligerents put forward was that of the equilibrium of States, or what we may call the political balance

—a phrase and a doctrine invented and practised in Italy, before any other country. We might, indeed, shun the discussion of this subject, since it is our present undertaking to discuss the intervention which is most prejudicial and perilous to the general liberty of the peoples, namely, that which pretends to meddle, by force of arms, in the interior affairs of a State. Nevertheless, I am disposed to consider how, under the semblance of saving the equilibrium of Europe, some member of the Pentarchy may choose to hinder some one nation emancipating itself from the dominion of foreigners, and joining its scattered provinces together with an unitary form of political government. To prevent these operations, in such a manner, would be to derange the cardinal principle of the mutual justice of nations, which is their absolute and inviolable autonomy; and therefore I may be permitted, briefly and incidentally, to deal with this much-abused and ambiguous subject of the political balance.


CHAPTER X.

EQUILIBRIUM OF THE STATES OF EUROPE.

BETWEEN private citizens, a great inequality of riches and influence is tolerable, for it may be expected that, with the growth and spread of education in the multitude, power or wealth may also come to be distributed with less disproportion. At any rate, there are the laws and institutions, which ought to protect everybody against the excessive power of the opulent and great. But between States, when the disproportion of their forces is extreme, we must confess that there exists almost a continual menace to the independence and dignity of the small and weak, there being no tribunals, or any other kind of institution, capable of preventing or of repressing the arrogance and the cupidity of the greater potentates. It is sad enough to consider that the excessive power of some of the States, and the feebleness and poverty of others, have not always been caused by their virtues, and by the contrary, but have sometimes been the work merely of fortune; and that their geographical position has proved to be of far greater advantage than their native genius or indomitable valour. Russia, to extend herself beyond all mea-

surement, has profited by the very barbarism of the tribes over which she reigns; whilst the too rich vigour and vitality of her every province, or rather of her every city, has been prejudicial to Italy.

However this may be, we will admit that the study of the political balance, if it did in fact tend to the valid defence and protection of the less strong, should be esteemed very highly. But we are too plainly instructed by history, that this political balance itself is managed and adjusted by the strongest and cunningest for their own advantage, and that their concern with it is not effectually to protect the feeble, but to anticipate the ambitious designs, or to lull the jealousies and suspicions of one or another competitor. We do not deny that by good fortune these rivalries and suspicions of theirs do now and then benefit the minor States, and we may see, for example, how the inferior principedoms of Germany find a sort of independence in the perpetual opposition of Prussia and Austria. But if the mighty ones choose well their time, whatever they do nobody ventures to undo, and the interest of the inferior States has to succumb; and then, although the realms of Europe should lose their due relative measure, it will still be said that everything is done for the best. On the other hand, each one of the Great Powers intends this equilibrium in its own way, and denounces or approves of it with respect to its own interests; thus for Austria, the balance would not be properly



weighted without the servitude of Italy, whilst in the judgment of England, that balance is disturbed if the Turks be expelled from Europe. Political jealousy and suspicion have indeed been in all ages the same; and the ancient Greeks and Romans kept this always in view, that when you cannot enlarge your own conquests, you should at least study to hinder those of others, and maintain between the most powerful States a prolonged and equalized contention of forces. The moderns have sought to make this a principle of exalted justice and wisdom, and, as it were, a foundation and an essential guarantee of the law.

But, amongst other things let us ask, has ever this equilibrium been defined, and has it been shown, at least with regard to Europe, wherein it consists, or how it may be obtained? Meanwhile, that equilibrium which the Congress of Vienna procured may be said to have been interrupted and in a great measure annulled; and as for the new one, how is it sustained, or who was the architect of it? Nevertheless, with every political change that occurs in Europe, we hear of every government setting up this cry of the equilibrium in danger. I think it is time now for the publicists, who behold such matters by the light of international justice, to state their opinion of this, deriving that opinion from the pure and eternal sources of morality and reason.

Any honest art of balancing the forces of the States should be controlled by that sovereign sen-

tence of the law of nations which declares, that every self-ruling people, however inferior it may be in territory and in riches, however slight and infirm may be its defences, ought to be enabled to dwell secure of itself and free in its own actions, beside the most warlike and formidable nations. And such an art as this, inspired and directed by the aforesaid rule of general justice, would bestow useful fruits upon the world at all times and under every change of circumstances. For it is not to be expected that the political forces of States should naturally arrive at a certain parity and equal amount, so that none should be sufficient by itself to override and destroy its neighbour. Let the obstacles to the complete formation of true and original nationalities be removed ; let it be granted to any self-ruling people to annex itself to others or to separate itself, according as its necessities or inclinations may incline it, saving always the unity and interests of its native country ; and notwithstanding this, much disproportion will yet remain between one State and another, between one race and another. What proportion indeed can the Rouman people ever bear to the Slavonic ; and what can there be between Holland and France, or between France and Switzerland ? A time may indeed perhaps come, when the present enormous aggregations of peoples will dissolve themselves into several smaller ones, or more commensurate with each other. Or perhaps, on the

other hand, strong and tenacious leagues will be formed between the various families of the same stock, as all the Germanic peoples on the one hand, all the Latin and all the Slavonic on the other ; and hence perhaps will result a new and unlooked-for balancing of States and forces. But for the present all that is rather a subject for poetical diversion than for instructive prose. Besides, to our mind it appears to be quite within the design of Providence, that the defence and the protection of small and feeble peoples should have to be provided for, not by artificial means, but only by the progress of mankind in the scrupulous observance of the dictates of justice, and under the daily improving guardianship of the universal conscience, growing in judgment, in strictness, and efficacy.

At any rate, we do not find fault with the study of the political balance in itself, so that it be not a fruitless labour, and so that it never depart from the maxims of rectitude, but adopt a loyal and candid course.

We may as well, therefore, begin with this golden sentence of Hugo Grotius, that "It must never be conceded, as some authors would teach, that it is, according to the law of nations, allowable to take up arms, in order to weaken and abase a State, the power of which increases from day to day, and which, if left to rise too high, may upon some occasion offend and overcome us."

We have only to add to the general and indeterminate case here put by Grotius, certain specific cases presented by the singular disposition of our own times, which are as follows : when a great nation claims and recovers its liberty, driving away the foreigners who rode upon its neck ; or when it brings together and unites its separated members so as to obtain an unlimited increase of vigour and prosperity. Of which let us, for an example, take Germany, if some day, abolishing its Diets of princes and substituting those of the peoples, it should order itself in a confederate body similar to the Helvetic or the American. Take likewise, for example, the enfranchisement of Italy, and the resolution of its parts into a well-tempered and united whole. In either case, we deny that any State could arrogate to itself a just title for intervention, or could possess any right to hinder by force Germany and Italy from this their work, under colour of its affecting the balance of Europe, or of its diminishing the relative power and influence of certain nations.

Modern civilization indeed, which has certainly more shame if not more virtue than the ancient, forbids the potentates to accuse, by proclamation, any State of having wrongfully altered the political equilibrium by growing in population, in wealth, armaments and navy, in a rapid and extraordinary manner, yet deriving everything from its own resources and occupying nothing of another's. America, we are

told, has doubled her population five times over within the lapse of sixty years; and Russia, though she gets on slowly enough in this matter, yet advances very quickly as compared with other Continental countries.

Yet these internal conquests, so to call them, which some States can thus accomplish in a short time, alter the proportion of political forces more than would be done by a notable augmentation of territory having accrued to any of these same States through a military success, or an inheritance, or a negotiation. If the effects are so similar, how can the rightfulness be different in one case and in the other? And if intervention be not allowed in the one, why should it become lawful in the other?

This consideration appears to confirm me in saying that such argument of the political equilibrium never in itself constitutes a legitimate motive either for war or for intervention.

But what, then, may be pronounced the good and fair means of preserving, not exactly this equilibrium of States, which perhaps never can become effective and durable, but the security and defence of the lesser potentates as against the greater ones, and the peace and tranquillity of all against the ambition and insolence of some of them? We answer that they are but few in number, and those which good sense and righteousness must suggest to everybody. The first consists of friendships and leagues with each

other. Political economy teaches us how small proprietors, by associating themselves together and putting their capitals into a joint-stock fund, may preserve the liberty of competition and prevent the enormously rich capitalists from practising or maintaining any kind of monopoly. But, to the discredit of our race, commercial interest has better persuaded and trained men to co-operation and union, than the love of independence and national unity has done. Political friendships too require, like private ones, candour, fidelity, and constancy. These qualities may appear now and then to stand in the way, but in the length of time and variety of events it is found that they alone do any good; and there are many acts of perfidy, overlooked sometimes on account of the lustre of immense power and victory, but which in those who are less mighty and less glorious would never be forgiven. In addition to these precautions, if you will help yourself as well as you are able and know how, and if you display steady proofs of a generous, high, and manly spirit, somebody will be sure to come and take your side, and even the adverse alliances of the potentates will become less noxious and dangerous to you. In Italy of old, it was just in this that the art of balancing the States consisted; that the five chief Powers which divided the Peninsula, namely, Venice, Milan, Rome, Florence, and Naples, banded themselves together, and kept watch in such a manner that, when any one of

them was visibly augmenting its forces and revealing ambitious intentions against its neighbours, the others immediately leagued together, compelling that one either to lay aside its meditated enterprise, or attempt it with almost a certainty of failure.

The second way of fortification and defence is for a State to promote the increase of the resources of its own community, and to grow in population, wealth, science, trade, and influence better and more plentifully, if possible, and in less time, than other nations. Who is not aware that the strength of a State can but very inadequately be measured by the breadth or scantiness of its territory? It is observed by an eminent writer, that in Athens there were not more than twenty thousand citizens, when it defended Greece against the Persians, disputed its primacy with Sparta, and laid siege to Syracuse; and there were also twenty thousand citizens when Demetrius Phalereus counted them over, as heads are counted in a slave-market.

A third method of security invented by the moderns is to declare certain provinces and States neutral; a fourth way is to place certain provinces and States under the especial and collective patronage of the most powerful European Governments. Both of these ingenious expedients—which avail so long as the faith of treaties and mutual respect between the Powers may endure—evince, as it seems to us, that the sentiment of right and the religion of

engagements do become, from age to age, firmer and more profound. This naturally leads us to consider the best of all means to check the ambition of some nations, and their excessive power, although to many ears our words will sound fitter for a catechism than for a treatise on public law. But we have said once before—compelled by the truth to say it, and now we shall willingly repeat it—that to diffuse through the educated part of the peoples the light of sound and sure principles of international justice, is to advance the work of reforming and settling political Europe far more than any diplomatic inventions can do. And we may say just the same of the balance of States; for these will keep themselves quiet, and observe due respect for each other, only when, in the minds of all, the two following maxims shall clearly prevail. The one is, that the really useful and enviable conquests in our times are gained by one's augmenting everywhere his proper civil influence, and by excelling in authority and wisdom. The other maxim teaches, that the peoples are not an object of inheritance, or dowry, or bargain. By these two rules, we take away the possibility of those large and sudden acquisitions of territory, which were in past times the most frequent occasion of war, and so much deranged the political balance. The ancient public law certainly did not forbid, as a result of a just war, the holding of the conquered people subject for ever; likewise, it did not forbid princes, by a testament, or

by way of dowry, or by conventions, enriching themselves at once with large kingdoms, and annexing them to their own ancestral dominions. Thus, Charles V. by inheritance added Spain to his paternal Flanders ; and, by election, united to those two States the German Empire ; and, by true or false claims of heritage or relationship, demanding the Milanese, the kingdom of Naples and other provinces, and supplying the deficiency of his titles with the sword, threatened Europe with an universal monarchy. So, too, at a later period, it happened with the Spanish succession, and then with that of Charles VI., both placing upon the head of a single monarch several crowns at once. It seems very strange that the wisest and the most moral of our contemporary publicists, rather than doubt the right of princes to transmit their crowns to whomsoever they please, and the right of inheriting them like a fat estate, according to kindred and the clauses of a bequeathing testament, propose, for a sovereign remedy against such dangerous consequences, a right of intervention which is very open to dispute, and declare it to be just to make war for the object of hindering the excessive aggrandizement of some potentate. Instead of this, just suppose that in the last century there had been a perception of the truth, that no prince should keep upon his head two or more distinct and separate crowns ; the fact being that this does usually prove disastrous to the liberty and autonomy of one

and perhaps both of his kingdoms. Suppose, moreover, that it had been judged both equitable and opportune to consult directly, and in a fair, effectual manner, the will of the peoples; this would have amply sufficed to dissipate the very grave anxieties excited by the Spanish and Austrian inheritances, or they would have found some other solution than by a prolonged general war. These two principles or truths, be it remarked, do in practice become one. For in the present state of knowledge and civilization, every people which has a feeling of itself, and which has the opportunity and means of deliberating upon its own fate, will flatly refuse to be given by inheritance, or by dowry, or barter, or in any other fashion, to a foreign monarch who, being furnished with the forces of another vast kingdom, can violate the will of his new subjects, and can rob them of every franchise and right. We actually see that in our own days constitutional charters do provide for the transmission of the crowns with regard always to this, that the outward self-rule of the State and its internal liberties may not receive any prejudice thereby.

Then, if modern international law shall henceforth come more and more to confirm the rule that war, though it be lawfully undertaken, entails no right to annul the national self-rule of the defeated people; if, on the other hand, the world shall become more and more persuaded of this important truth, that conquests

gained over highly-civilized populations do prove, in our days, less profitable than pernicious to those who make them, very difficult to maintain, and finally productive of weakness and trouble rather than of strength and security; and that the age is now for ever gone by when it was possible, with a ruthless and ferocious violence, to devastate the lands they had occupied, or compel the conquered to confound their own existence with that of their conquerors; and if, in fine, it shall be acknowledged that dowries, heritages, donations, and barter, are no longer a sufficient title for the sudden annexation of vast and populous provinces together, then every one must see that the principal occasions of this incontinent aggrandizement of States now will be removed; so that in this respect the thing which used to be very improperly styled the European equilibrium, would not afford a subject for just fears and apprehensions. The occasions of such aggrandizement, which would still remain alive and operative, are of a very different character.

The peoples, which will no longer endure to be the patrimony and heritage of anybody, only aspire to the full recovery of their own being, where it is not yet complete; or they aspire also to form of their several countries a single grand one, specially to be called a nation. For the fable of Androgeus is exactly realized in the races of mankind; and, like as he was undivided in the beginning, forming one human person only, and was afterwards by violence

split asunder, dolorous and unhappy in all his fragments, which endeavoured with an infinite desire to rejoin each other, so it happens with the parts of a great nation, as soon as they remember to have been one, taking cognizance and conviction of their inward identity.

Now these two aspirations of the people, if they succeed in their intent, must of necessity bring in a notable alteration of the so-called political balance : on the one hand, by some of the Powers becoming too lean and exhausted by the deprivation of their enfranchised provinces ; and on the other hand, by the rising of this or that nation to the summit of its own power, through the union and agreement of all its populations. Indeed, we have lately heard how the aged and envious polity of Europe complains of the incipient liberation of Italy, for the menace and the danger which it appears to cause to the European equilibrium.

But we, according to the principles we profess, and according to the whole series of ideas and arguments thus far displayed in this book, are led to conclude that these twin aspirations are eminently just, lofty, and magnanimous, and we are even brought to believe that, let their purpose be once attained, the settlement of Europe will prove beyond comparison more solid and more convenient. Not that the political balance of the States will therefore remain a perfectly even one, as we have said ; but

the proportion between them will become a better one, and, what imports much more, the chief causes of litigation, usurpation, and war will be taken away. And besides, in the absence of that which is the ordinary and most legitimate cause of the peoples complaining and repining against the treaties and conventions, there will be an immense growth of observance and faith in regard to them, in which, as we have acknowledged, must ultimately be found the stoutest and the best-tempered armour for the defence of little States against the exceeding mighty. Let not this opinion of ours be deemed exaggerated and partial, but only think for one moment what good order Europe might have been enabled to preserve, if the diplomatists at Vienna had proceeded according to the maxims of true public law.

We declare that had the Italian nation been emancipated and united by a strong confederation, there were in the Peninsula two or three hundred thousand soldiers ready to defend it against France ; or ready, in case of need, to join themselves with her and the other potentates against the ambitious designs of Muscovy. Moreover, that our Peninsula being emancipated, and capable of setting afloat a numerous navy of admirable sailors, would not have permitted any State to say, "The Mediterranean is my lake." Whilst, upon the banks of the Rhine, Germany, if constituted with a fair and honest confederation of her peoples, would have rendered any pro-

EQUILIBRIUM OF THE STATES OF EUROPE. 163

ject of conquest, on the part of the restless sons of Brennus, futile and vain. And Germany, in concord with herself, giving her hand to the Poles, once more restored to their unity, they would have formed with their own breasts the best rampart of Western Europe on the side of Russia. Lower down, towards the south-east, no longer being hampered with the care of keeping Italy in servitude, but having become the Great Danubian Power which her destinies inclined her to be, Austria would naturally, and with the happiest success, have forestalled the dangerous intrigues and intentions of the autocrats of St. Petersburg. But the Holy Alliance quite misunderstood the character of our age and the destiny of the nations.

CHAPTER XI.

THE PRINCIPLE OF INTERVENTION AGAIN.

It is now time for us to examine those peculiar cases in which, more especially, it is sought at the present day to find a right of intervention, those cases, namely, in which revolutions and political changes in the interior of a State are deemed pernicious to the security and the tranquillity of other States, and chiefly of those adjacent to it. It is usual emphatically to denounce this species of danger or prejudice as a species of instant menace and an offence, wherefore an armed intervention takes place, in order to prevent the one and to repel the other.

We must here above all distinguish accurately between moral and material damages, and so discern whether this instant menace be a moral or a material prejudice and offence; and we must inquire whether, in cases of this kind, the rights of others sustain any greater detriment than that which is to be endured from mutual tolerance and liberty of action.

Supposing a positive and sensible damage to accrue from the change made by a neighbouring State in its internal order, it appears to us beyond doubt that neither the cessation of that arrangement

THE PRINCIPLE OF INTERVENTION AGAIN. 165

nor any compensation for it can be justly demanded. When a State, upon changing its form of Government, refuses to satisfy a debt equitably contracted by the former Governments, it is just and prudent for another nation to ask that the compacts shall be maintained, by the infraction of which the estates and fortune of its citizens might be seriously damaged; and hence, if solicitations and friendly instances prove unavailing, this nation has a fair right to regard the transaction as a *casus belli*.

Indeed this is not an intervention, since it is not demanded that the internal affairs of that State should resume the shape they had cast off and return to their past condition, but it is only demanded that, from the innovations which have occurred and have already been completed, there shall not be derived a specific and notable detriment to the wealth of another State.

But now let us suppose that the incessant danger, or the grave and permanent loss, be a moral and not a material one, and that it can no otherwise cease, nor be met with any other check and compensation than by abolishing its causes, which proceed immediately from the great and extraordinary revolutions or innovations that have happened in the internal political form of a State. It was said at Laybach and at Verona, If it be our duty, so far as possible, to remove every threat and every mischief from our peoples, we have also a right to resist the

causes, and therefore to intervene where the causes persist; and, if no other expedient than the use of our arms should be sufficient, the use of our arms will become both legitimate and necessary. What, shall it be lawful to demand the cessation of those causes of injuries and losses which damage our property, or which seem to affront the dignity and majesty of our State; and shall it not be likewise and still more lawful, when the moral welfare of our subjects, when peace, obedience to the law, tranquillity, and public order are menaced or actually disturbed? If this do not supply a right and obvious motive for armed intervention, what else can ever do so?

For the refutation of this specious and animated appeal, we must have recourse to some more refined and essential considerations.

Let it be remarked, firstly, that every social and civil ordinance of a people, and every religious or political form which it may adopt, though contained and shut within the boundaries of the State, does exert a moral action which, of necessity, goes beyond the frontier; for such is the nature of spiritual influences and the life of ideas, the spread and propagation of which it is impossible to hinder. What State really, even in the quietest and most ordinary times, and however it be disposed or situated, does not produce, both within and outside itself, both far and near, a certain radiation, if I may so

THE PRINCIPLE OF INTERVENTION AGAIN. 167

call it, of examples, influences, and ideas? A people ruled by an absolute royal Government presents to others its own example, and diffuses with some efficacy its respective maxims and principles. Instead of this, the free State gives quite a contrary example, and quite opposite principles and ideas emanate from it. He, therefore, who should be minded to interdict any State from this spiritual action beyond its own territorial confines, would render it impossible for that State to exist; for if it exists, it does by that very fact afford an example to others, and propagate ideas, sentiments, and principles. And if the interdiction were restricted only to certain sorts of example and a certain kind of principles, what would become of the inward and outward self-rule of the peoples, and of the original, inviolable faculty they possess of governing themselves at their own will? Besides, let us reflect that such an act of prohibition, to be an impartial one, ought to be reciprocal. For, if one Government complains of having too near it the example of popular tumults, and of being exposed to the invisible, but the daily and potent operation of what are called democratic ideas, the State within which these ideas are stirring may with just as much reason complain, that feudal and retrograde opinions prevail among its neighbours, and that the example of a political servitude is thus perpetuated and made seductive by the social repose, by the pompous elegance of courtiers and

nobility, and by the habitual toleration of all kinds of dissolute and profligate living. But this, it will be answered, is mere sophistry, because the examples are not of equal effect, and no people copies the tranquil servitude of another, whereas the mania of imitating an example of liberty finds its way by degrees into them all. I grant that there is a great difference between the one example and the other, between the one principle and the other; but, if the one can avail but little and the other immensely, the fault of that does not lie with the States, but with the invincible efficacy of truth and reason.

We do not hide from ourselves the observation which some of the diplomatists would make upon this argument of ours. They would say that a case for intervention occurs, not where good and sound principles are professed, or those from which salutary and correct examples are derived, but where the reverse of this takes place, and maxims are taught subversive of public order. Very well, gentlemen. Now listen to what is to be advanced in reply to you, and if we do not catch you out in a manifest error, we will consent to the decrees of the Verona Congress being ranked next after the Decalogue. We ask you, firstly, who is a competent judge, between the peoples, of the goodness or badness of their political doctrines? You think an absolute Monarchical Government is most excellent, while others think it is very bad. You

fix the full and irrevocable sovereignty in the prince ; others in the people alone. You prefer the tranquillity of servitude to the tumults of liberty ; but others, on the contrary, esteem the latter so dear and precious, that, to acquire or to recover it, they would willingly sustain even the disasters of a civil war, or the incalculable losses and miseries of anarchy.

But you reply that here, it is not any doctrines that are in question ; and it is well understood that all Governments cannot be of one fashion, but must vary according to place, and still more, according to the natures of men. The thing we contend against (you say), is the unbridled spirit of revolution, the mutiny of armies, the infraction of every law, the impudent revolt against all authorities, and especially against that of monarchs.

We answer, that nobody likes revolution in itself and for itself ; but that it is a much less evil than abject and irreparable servitude ; and that where revolts do break out, we should not look merely to the effect, but to the causes also ; and it will easily be perceived that the fault of that proceeding, if any fault there be, is much rather to be ascribed to those who refused in due time the necessary reforms and alterations. Nor is it to be believed that revolutions are effected by the peoples only, for sometimes the kings themselves are the authors of them, if we may call revolution the infringement of the laws, the

trampling upon others' rights, and the daily employment of violence. Do not reply to us that the thing which an absolute sovereign does cannot be contrary to law and right, since, finally, he *is* the law and the right. Reversing this argument, the chiefs of revolt and revolution will reply in the same manner, that the people, being the absolute sovereign, makes and undoes everything, and always with a clear right to do so, just as Rousseau has written. We would fain put a stop to this vain cross-fire of retorts and repartees ; and we have no objection to confess that the peoples are not unseldom wanting in sense and moderation, and that excited multitudes often brutalize themselves, and become devoid of kindness, righteousness, and humanity. This is a most deplorable result, and dearly do the peoples and the multitudes atone for it by their disorderly condition, by their brawls, robberies, and bloodshed. But what then ? If all this does not transgress the frontiers of their own State, there is no ground for an armed foreign intervention. The liberty of each nation inwardly to govern itself, may be regarded from two very different points of view. The one has respect to the precepts of what is in itself true and good ; the other belongs to its equitable relations with foreign States. In the first respect, it is surely not lawful for a people to do anything which is opposed to the principles of moral and political reason. But in the other respect, it is clear that it may use or

THE PRINCIPLE OF INTERVENTION AGAIN. 171


abuse its own liberty, in the same manner as in private life a proprietor may squander his estate, and fall from opulence to beggary. If it is upon the State itself that the loss and the blame are to fall, and if only the example and influence of its error go beyond its frontiers, then its juridical relations with others are still untouched, and its outward autonomy remains inviolable. A very different conclusion must be arrived at whenever a people troubled with intestine disorders and insurrections should send secret emissaries into the neighbouring provinces, should send arms thither, should scatter money, printed papers and books, signals, and tokens there. This half-armed and disloyal propaganda would doubtless be a rupture of the mutual faith of nations, and would give others a right to repel and put an end to it by means sufficient and proportionate to the object. But what else was done at Laybach and at Verona than to invest with legal and solemn formalities an armed propaganda of certain principles? What did the Austrian army teach when it entered by force into Piedmont, Romagna, and Naples, except the unlimited sovereignty of princes, and the irredeemable servitude of their subjects? What was it that the Duc d'Angoulême, with his array of bayonets, sought to prove to the Castilian people, but this most strange doctrine, that it was unlawful for Buonaparte to propagate by force beyond the Pyrenees the maxims of 1789, but that it was lawful and just,

on the other hand, for the Bourbons to propagate by force that of the right divine of kings?

From all this proceeds a dilemma which admits of no possible escape, and which stands thus: Either the internal independence and sovereignty of States do not subsist, and can be limited or determined by the will of some foreign States; or else it must be conceded that the right of intervening by arms never arises where that sovereignty, though it be self-abused, does not in its actual deeds transgress beyond its own territorial boundaries, and where that which it does transmit outside is but the invisible operation, which cannot be coerced, of example and of opinions, or the distant echo of uttered words, and the hidden bond of moral sympathies.

Regarding the matter in another light, it is satisfactory to observe how the ardent advocates of that sort of intervention which we are now discussing, betray but too plainly their timidity and impotence in the presence of this virtue of example and opinion. Governments which are good, and altogether based on justice and reason, are not frightened by contrary examples; and to false and subversive ideas they oppose such as are healthy and preserving. Or, rather, they hold that the spectacle of continual tumult and excess, perpetrated with all sorts of vice and ribaldry by the populace elsewhere, should tend most profitably to sober and instruct a people, as the exhibition of the drunken Helot was a lesson of

temperance to the Spartan. So England, separated from France by only a narrow frith of the sea, never missed her usual quiet, or diminished by a single jot her perfect liberty, in the sight of that half-republican, half-social revolution which, unforeseen and unforeseeing, broke out at Paris in 1848. Holland, that ancient mansion of liberty, was not the worse for it; and Belgium was not the worse for it, —a little country without a frontier, and, as it were, encased in France, but ruled by excellent institutions. Here stands now another dilemma, the horns of which, as we think, are not easy to evade; and it is as follows: Either your neighbour's example, opinions, and principles are perverted and fatal; and then it will be sufficient for you to expose their foulness and wickedness, if indeed the effects of them should delay to reveal them as they are; or else, the proceedings of your neighbour, and the maxims which he inculcates, correspond with truth and justice; and then, your intervention to suppress and trample them down is an outrageous and wrongful, as well as a fruitless and an impotent attempt. For a dogma of truth and justice will be able to do much more, in time, than all the armies, police, gendarmes, and court-martial sentences in the world can do. Whoever can recollect the events of the past half-century may bear witness to this. Look what is left of the armed interventions in Germany, in France, in Italy, and in Spain. France has sown throughout all Europe



the principles of 1789, the fruits of which here and there are ripening, in spite of the famous manifesto of the Duke of Brunswick, and of the leagued armies of Austria and Prussia, which came on behind it. Spain has returned to that form of government, against which the soldiers of Charles X. were sent across the Bidassoa, and Riego was sent to the gibbet. It was then declared by a poetical diplomatist that they would have no barrack insurrections in Spain, that they would not have any force put upon the will and mind of the sceptred descendants of St. Louis ; but the barrack insurrections have been repeated, and the royal obstinacy there has again been constrained on more than one occasion to give way. And Italy is not only, in spite of the decisions of Troppau and Laybach, now going on to redeem her own liberty, but is shattering those very armies which arrogated the perpetual right of interfering in each of her provinces. Last of all, Germany, which has hitherto been controlled by a senate of princes, ever prompt and vigilant to quench any spark of popular feeling wherever it appeared, is now calling with a loud voice for a new and different Federal Compact, by which her citizens, no less than her kings, may enjoy a suitable representation.

There are some colours, used to disguise a doctrine, which are at once so familiar and so taking to the eye, that they are found universally agreeable, and thus obtaining credit, they by degrees usurp for it the

place of reason. So it is with the vivacious metaphor, by which a certain class of diplomatists are wont to disguise the impropriety and injustice of that intervention we are now discussing. They say over and over again, that nobody, when his neighbour's house is in flames, will stand in doubt and waiting, but will enter and hasten with every instrument to quench the fire as quickly as he can. And this is how we act, they add, in the case of the terrible revolutionary conflagration, when it burns close by, and threatens our own house.

We might let this trope or similitude pass from a rhetorician, who sought either to excuse the act or persuade men to it; but when we are dealing with diplomatists, who should be jurists and philosophers, we must be more strict; and we can never concede to them that a material and palpable damage or danger is to be compared in any way to a moral influence, or to one which operates only, and that indirectly, upon the intellect and heart. It would be a less improper comparison if you assumed that in your neighbour's household, he began to lead an irregular and disorderly life, or at any rate, a life very different from your own. You will then observe, that you have neither any right nor any reason to enter into his dwelling and compel him to change his customs and his habits, for he does nothing to damage your property, nor does he form acquaintance with your sons to seduce and corrupt them; nor does he, upon

the whole, exceed the limit within which the private liberty of each citizen maintains itself compatible with that of each other and of them all. You must compare human things with human things, and not compare bodies with souls, or the effects of spiritual with those of physical laws. You do assert, however, in fact, that these changes and revolutions, on account of which you violate the self-rule of States, are a devouring and destroying fire. But this is denied by others, who think it would be an apter metaphor to liken such political revolutions to those vehement but transitory convulsions of Nature, by which her works are purified and transformed, re-organized and beautified afresh.

CHAPTER XII.

EXCEPTIONS TO NON-INTERVENTION?

By every consideration, therefore, approaching the question on each side, and in several ways, we arrive at this solemn declaration of the law of nations, that all forcible intervention in the internal affairs of a people is to be deemed unjust and oppressive. It now remains for us to see whether this absolute and universal principle can ever be subject to any exceptions. For if this be so, there is great need of specifying these cases, and defining them with the utmost rigour.

We say, then, that in the first place there can be no doubt that armed intervention becomes lawful and proper, and sometimes even quite necessary, to prevent or to repel the wrongful intervention of others. We think nobody will affirm that England, for instance, had not a good and a complete right to interfere in 1826 in Portugal against the help of arms, money, and soldiers which was furnished, now openly, and now underhand by Spain, to the Prince Don Miguel, in order to enable him to carry on the war against Don Pedro his brother.

Less clear to me, however, seems the reasonable-

ness or rightfulness of the quadruple alliance stipulated in London in 1834 between France, England, Portugal, and Spain, and through the effects of which the Infante Don Carlos, who was then just on the eve of triumphing over the partisans of Donna Christina, was by overwhelming foreign forces combated and defeated. It is true that the act of alliance between those four kingdoms was preceded by a formal recognition of the legitimate authority of the Infanta Isabella upon the Castilian throne, and of the Queen Maria da Gloria upon that of Portugal. But was that recognition then dependent upon the judgment of the Allies, or ought it not rather to have turned upon the definitive sentence which the peoples of the Peninsula should have passed upon it? Assuming that the titles of those two queens appeared quite evident in the opinion of the Allies, could ever any manifest right be thence derived for them to come in and take a part in the civil conflict? The Portuguese, and likewise the Spaniards, were divided in mind and spirit amongst themselves. They warred for several years, obstinately and with an uncertain issue. Now as I have shown above, in any civil conflict armed intervention is of necessity unjust, for whilst it is a grievous outrage on the one party by combating and overcoming it, it is an outrage on both parties together by violating the independence of their State. It imports but little to say that one of these parties

invited and impatiently coveted the foreign aid. They were imprudent citizens who did so, and ready, for the triumph of their faction, to compromise extremely the liberty of their country. An illegitimate wish cannot be legitimately complied with. But this intervention took place in favour of liberal principles! And what of that? Our principles remain unchanged; for in science, as well as in practice, we must not use two different scales of weight and measure.

Here a fresh inquiry presents itself. Suppose that a wrongful intervention has taken place in the internal affairs of any State; and suppose that, having continued for some years, it has generated a violent and unnatural state of things, which goes on and extends its deplorable consequences a long time after the intervention has ceased. May any Power which is friendly to the liberties of the people enter with arms into that country and remove the secondary effects of the former intervention, so that things may resume their natural and normal course?

In Naples, for instance, the course of public affairs appears to have been just like this. The Austrians, after a sojourn there of several years, evacuated the kingdom, but leaving impressed on every mind the certainty that in case of need they would retrace their steps thither again. In addition to this, mercenary Swiss troops were called in, which, being a blind and brute instrument in the hands of their

paymaster, hold the native soldiery in check, as these do the populace, and both together compose in that country a well-compacted machinery of slavery and terror.

Now we think everybody will remark that, in order to make a proper answer to this inquiry, it would be needful to ascertain the precise measure of how much of the actual condition of things in that State has been caused by foreign arms, and how much the people itself has caused either by its indolence, or by its licentiousness, or by its ignorance.

It remains for us, however, to pronounce as a general opinion, as it were in the abstract, that where the political circumstances of a nation continue substantially such as a foreign force has once made them, and are the prolonged and necessary effect of that foreign force, there does not appear to us any good or sufficient reason to condemn as impertinent and usurping this other foreign force which would abolish the remote but pertinacious effects of the former one; inasmuch as the lapse of time, not altering the nature of the thing, neither can it alter the essence and conditions of the right.

On the other hand, suppose the case of a people, which should, backed up by foreign arms, win the enjoyment of public liberties secured by means of a constitutional compact with its prince. We will not alter the tenor of our words even in this case; we must deplore the country which has needed to resort

to such foreign aid. When that shall fail it, then the guarantees of public liberty will probably also fail it, and still worse will it be if complaints shall arise against the strangers for not having protected or maintained by their arms that which the native arms will not or cannot defend. And this was the case of Sicily, where England had compelled King Ferdinand to renew the ancient parliaments of the island, conforming them to the ideas and usages of our time, and had formally declared herself the promoter and protector of the new Constitution. The Napoleonic wars being over, and the Bourbon having got back to Naples, he made haste to brush this eyesore out of his way, and effaced the new Constitution of Sicily; nor did England remember the part which she had in it or the firm patronage that she had promised it. Did she then commit a sin of infidelity? I reply, that, if particular obligations ought to prevail over an universal and absolute law, then English statesmanship was certainly to blame, because an engagement, and not a transitory one, there indeed was; but if the principles that we have laid down ought always to have the upper hand, then England stands acquitted at least in so far as she did not come by force to uphold the Sicilian Constitution, because such an act could never have been reconciled with the internal and external self-rule of the Neapolitan State.

Foreign guarantees, offered and accepted for the

maintenance of a certain form of Constitution and Government, are disapproved, in general, by justice and by prudence. For under the pretext of defending and saving that form from the assaults of other Powers, it not only comes to be imposed upon its own authors, but the guarantee of it is converted into a disastrous admission of the counsels and weapons of the foreigner. The incautious Poles had to experience this, when they had accepted of Catherine II. her aid and protection to maintain the *liberum veto* and the toleration of religious worship. And the same was also experienced by the Dutch partisans of the House of Orange, who had thought it good and useful to have England and Prussia to guarantee their monarchical constitution of 1749.

Let us now take another supposition, which is that a whole people does obstinately violate and destroy in its own State the most obvious and fundamental rules of humanity and justice.

Now Grotius does not hesitate to lay down, that amongst the reasons of a just war may also be noted the purpose of checking and chastising a people which should outrage in any enormous manner the dogmas and precepts of the law of social morality. And this he holds, because the function of restraining and punishing the guilty does not proceed solely from the authority of a civil community, or require of necessity the existence of a certain primacy over them. For by the law of nature, as Grotius

thought, this function resides in every private man, and hence it resides in each of the States, which are the several individuals of the universal human family, dwelling among themselves according to the dictates of simple natural law. With much wisdom, however, did that great jurist go on to say, that the subject is a very nice and difficult one, and one to be treated with sundry qualifications and reserves.

Certainly, even although this sentence of Grotius did fully correspond with the truth, it could not be well applied excepting in the case where, on the part of the punishers, all ambition, all interest, and all cupidity with regard to those whom they were to punish, had ceased to influence them; and in the case where the outrage which had been done to the principles of morality was not less enormous than clearly and notoriously manifest; and lastly, in the case where the people accused and threatened with chastisement had haughtily persisted in choosing to contravene the evident and fundamental principles of righteousness and humanity, even after they had been more than convinced of their error. This last clause of the hypothesis is probably more difficult than any of the others to be realized, or indeed it is impossible, since an entire people will but rarely sin, and never against reason perceived, or with a deep and contumacious perverseness of will.

Yet however that might be, we feel not a little doubtful about the speculative principle itself as

propounded by Grotius. Avoiding here as elsewhere the temptation of involving ourselves in abstract disputations fitter for the academical arena, we think we can affirm that the right to punish (even though we agree that it does not wholly originate, as many believe, in our social necessities, or derive its entire legitimacy from the sole function of guarding and preserving the safety of the civil community) is yet subject to the rigorous obligation of being commensurate with those necessities and that safeguard. But the enormities perpetrated by one people within the frontiers of its own State, without any external offence or damage of the material sort, do not bring into serious jeopardy the safety of the social existence of the other States. And if they did so by the mere influence of their example, we must suppose that the people of other States were imitating too closely and exactly the foreign model, in which case their rulers would have something else to do at home in punishing the crimes which they so abundantly shared.

Some will here say, Leave alone the question of punishment, which is confessedly a very doubtful one where not private citizens but entire peoples, each constituting a free State, are concerned. It will nevertheless be sometimes necessary to defend oneself, which cannot be done effectually without energetic repression, nor can this repression be effected without an intervention.

They will go on to say, We cannot swallow that sentence of yours, that a whole people seldom or never sins and offends against the conviction of reason ; nor can we agree that a people never in any case inflicts offence and injury upon another beyond the limits of juridical toleration, when its outward action consists wholly and solely in the efficacy of its example and the influence of its opinions. In the first place, a whole people, or the majority of it, may obstinately do wrong through fanaticism, which is a conscience that has from day to day become presumptuous and erroneous, and which conceals its malice under the garb of a virtue. We need not refer to savage or barbarous races, or to those who kill their aged fathers, and then feed upon their flesh, or to those who sell their wives and children for a price ; which were perhaps the peoples that Hugo Grotius had in his eye. But remember the Anabaptists at Munster and the Jacobins at Paris ; and think of the American Mormons or the Socialism of Cabet. In these cases, how can you persist in affirming and asseverating that the people on their borders ought to stand by with their arms folded and wait until the invisible miasma of that moral pestilence shall have penetrated to themselves, and all remedies become too late ? Why, what very strange notions you must entertain of human nature ! Are you not aware how much it is inclinable to evil, and how the populace especially, when once they

have broken their leading-strings, run on perversely and furiously with the blind impetus of their ignorant and base cupidities? Truth and reason are certainly destined at some period to prevail amongst men. But whilst awaiting their victory, it is possible for human societies to undergo a long season of weeping and bloodshed; and it is their express duty to preserve themselves by every means, if not punitive, at least repressive; and there is a tacit reciprocal engagement between them to maintain at whatever cost the fundamental order of all human and social existence.

A certain set of Conservatives and Absolutists do hold this language; between which objections, and the other argument that we lately discussed and disposed of, there is, as our readers may perceive, a certain natural connexion of ideas, for that argument now comes back upon our hands, not with any difference at bottom from what it was before, not reinforced by any fresh logic, but only dressed up in more vivid colouring and armed with keener rhetorical weapons. Now, therefore, the perfect and irrefragable truth of the conclusion which we arrived at shall be proved over again; for with so grave a subject of controversy, there is some use, or at least some excuse for these partial repetitions.

Let us before all take note of the limitations of this dispute. The universal maxim that the peoples, with respect to each other, are absolutely self-ruling,

is not denied; and hence, the principle of non-intervention, as a general rule, stands confirmed. But its adversaries, beaten at every point, betake themselves to their last citadel by maintaining that, in certain extreme cases only, there are certain limits to be put to this internal liberty of States; and that it is not any longer to be respected, whenever their example and moral influence place in jeopardy not merely the quiet and good discipline of the neighbouring States, but all public order itself, and so even the security of our own private possessions and the ordinary exercise of social justice.

To begin with this, let us remark who are the persons who so bitterly complain of States abusing their liberty, and who predict from that abuse of it such dreadful consequences. They are the very persons who daily set up their cry of lamentation and reproach at the existence of any liberty except their own. It is they who would put restrictions on the Press, who would tie up free competition, who would limit the power of Parliaments, who, in short, would establish limitations upon everything, under the obvious and vulgar pretext that parliaments, free trade, and a free press do abuse their faculties, and do, in particular matters, now and then transgress. Small-minded and small-hearted as they are, these persons can behold nothing but the transient and accidental disadvantages of liberty, without ever being able to raise up

their spirit to that height from which, as from a lofty watch-tower, turning the contemplative eye, it sees the substantial and durable good which humanity derives from those franchises, and the gradual amendment which they work out of themselves and of their abusive employment. These persons in like manner, lynx-eyed as they are to spy out any risks and inconveniences which may here and there possibly accrue from the inviolability of the several peoples, will not consider the grand, perennial, countless benefits which that principle bestows, and which are perpetuated in every place throughout all ages. You say, that the human will is corrupt and inclined toward evil. It may be so; but I know that when deprived of liberty it much more depraves itself, and in the masters yet more than in the slaves. But those who mean to correct the peoples without respect to that national independence which is the chief of liberties, are they incorruptible and infallible? And does the same temper of fanaticism, which occasionally carries the multitude away, find no access to the mind of those potent ones who are so eager to accuse the people of delirium and insanity? Bad examples, unhappily, no doubt, do at certain moments prevail over the good; and well and desirable would it be that they should never appear. But all around us, and within our own communities, how many evil examples do we observe, and how sadly efficacious! of lying, feign-

EXCEPTIONS TO NON-INTERVENTION? 189

ing, and hypocrisy, of riot and debauchery, of waste, ingratitude, and treachery, which the civil law cannot repress! The ancient republican legislatures indeed,

*"Atene e Lacedemone che fenno
Le antiche leggi e furon sì civili,"*

did think to provide a remedy for these vices by a public and private censorship; but it was found that by this attempt they destroyed private, and disturbed public liberty, and introduced a medicine worse than the disease. The same opinion, with still more reason, may be held with regard to the liberty of States, which are the individuals of the universal Commonwealth, but are not subject to any magistracy or tribunal.

You would have a limit fixed upon their liberty, where their moral influences and examples become so effectual as to induce or threaten to induce some social or political convulsions in other States. I pass over the almost impossibility of assigning such limits, and the abuse which the less sound and less upright European Governments, which are thereby the more continually endangered by neighbouring influence and example, would be sure to make of this power. I pass by, moreover, the circumstance that the assessors of this limitation would be partial and interested men, devoid of any direct or legitimate authority and jurisdiction over the other peoples; so that the inward and outward liberty of these

would never be secure, and they would be at the mercy of so many censors and judges, all the mere equals of themselves. Omitting these considerations, it is however requisite in such a controversy that we should never break the thread which connects the subject with the principles bearing upon it. It has been stated by us that, in a juridical point of view, all those actions of a State which are internal, are free ; and all those are absolutely internal, from which no other immediate effect proceeds outside than by the efficacy of their example and by the inevitable communication of opinions and sentiments. Now the essence of this kind of actions is not changed, because the spiritual efficacy which accompanies them converts itself elsewhere into facts which are not only positive, but grievous and disastrous. Let every State provide against that in its own interior, and since we hear such talk of pestiferous miasma from abroad, let each erect its *lazaretto* at home. But let the principle be maintained ; for surely I can never think that Nature and Providence have gone so clumsily to work with this world of ours, that principles can ever have to jostle with each other, for one or the other to fall down. The self-rule of States is sacred and inviolable, and from duly observing it, I am convinced, the ruin of society can never proceed, but rather general concord and friendship will in time arise. It is also certain that those influences and opinions

which are dreaded will be able to do but little in another State, if it be a prosperous and a free one, ruled with justice and wisdom. We have already mentioned some remarkable instances of this. Why, if the abuse of its internal self-rule, by any State, be so enormous and scandalous, as you fancy, how can this example be so very dangerous to the others? It seems to me that this danger must rather be in an inverse proportion. If that which is extreme and excessive cannot last, why do you not leave the extinguishing of this evil example to time? No, let us be candid, and let us rather confess that the efficacy of it arises from this cause, that the invisible seeds which are wafted over from it, fall upon a soil already more than disposed to receive them. The main evil is not, therefore, one which arrives from abroad, but one which is bred within. So that a Government which resents this and seeks reparation by forcibly violating the self-rule of its neighbour is attempting to redress its own fault by the commission of another and a more heinous crime. At any rate, if, notwithstanding the excellence or perfection of its own institutions, foreign influences do become pernicious to it, then let it employ for its aid those powers and manifold agencies which it possesses to defend its own laws, and in that case it will be certain to succeed, for a Government which is friendly to liberty and justice carries along with it the support of the greater and better part of its

people. Could we, by a strange and almost impossible supposition, conceive a different result, things would go against such a Government, and it would indeed be liable to a tremendous overthrow ; but in that event, it should resign itself to its fate, as to any other sort of inevitable misfortune, and, as Tacitus remarks, we do resign ourselves to the drought or the rainy weather. For it most surely has no right to prevent or to repair its own civil disasters by an infringement of the internal liberty of any other independent State, and we scarcely need allude to that first and commonest principle of all morality, that the means should be legitimate, as well as the end in view. And though it be infallibly true and certain, that it is the duty of every human society to save itself, and though we be allowed also to affirm that there exists between them a tacit agreement to help and protect each other for the sake of their common safety, this must always be understood with some discretion, and never extended beyond the limits of rectitude and justice. No sanctity, no grandeur of purpose, not even any necessity or extreme pressure of an emergency, can suffice to justify the resort to means which are not good. Let our diplomatists, both of the old school and the new, take care to remember this, that the observance of a principle is beyond measure more important than the peace, order, and safety of a single or of several States.

EXCEPTIONS TO NON-INTERVENTION ? 193

We will here allude to a case different from, or indeed contrary to, those which have yet been examined. So far, we have discussed unlawful interventions. We will at present consider an act which has the aspect of an intervention, but which substantially is not one, and which, thus exactly conforming to the law, stands absolved by the law.

When two independent and self-ruling peoples wish to form together a single civil community, and when such will of theirs is firm, enduring, and manifest, whatever then takes place between them is not of the character of an armed intervention; the military forces of the one are likewise those of the other; and so with their magistrates also, and with the instruments of every other species of immixtion and interposition between them. This is so true, that those troops and magistrates, and that exercise of authority, are willingly received, or rather, they are asked for and desired, and all this is accomplished without complaint from anybody, and to the general contentment. This supposed case is the one actually realized, in these very days, in Central Italy, where the admission of Sardinian troops, and of the authority of Victor Emmanuel, are asked for, desired, and invoked by all, in the most evident manner and without any perturbation. It is strange, indeed, to see how grossly the Paris journals have confounded this species of intervention with that practised by Austria in the Sovereign States of Italy,

where she always intruded at the call of the princes, but detested by the peoples, and exercising all manner of violence and coercion.

The doings or the misdoings of a people, therefore, within the bounds of its own territory, and without detriment to others' rights, never afford any ground for a legitimate intervention. What positive right of any other people has, indeed, upon this supposition, any injury done to it? Did you ever hear of anybody affirming that a man has a right to have none but good and virtuous patterns of conduct before his eyes, or to dwell amongst fellow-citizens in whose households no excesses of any sort are ever committed, and all of whom profess orthodox and correct opinions?

We have seen that one right principle cannot contradict another. The toleration of certain risks and provocations is a much less evil than infringing the principle of liberty, and trampling under foot the autonomy of States. Lastly, we have seen that those magnificent intentions with which the great potentates come forward, such as to preserve the peace, to rescue the dignity of thrones, to maintain firmly the foundations of public order, and the like, are not sufficient to belie the judgment of mankind upon their choice of the means to be employed for those objects. For certainly, they who once kindled the faggots for the punishment of heretics and infidels had also very holy ends in their purpose.

And what can be a worthier concern than to introduce civilization amongst barbarians, and to take them out of their savagery with its thousand pollutions?—yet, to convey such a blessing to them at the point of the spear, and by force of arms, as the Romans chose to do, was an uncivilized and tyrannical proceeding. To neglect keeping due measure and proportion between our principles of action, and to mistake the goodness of the end for that of the means, we find to be a very frequent cause of error, affording at all times a pretext for interested and passionate men to gratify, under that cloak, their spirit of violence and ambition.

Moreover, such general and indeterminate phrases of preserving order, saving monarchies, quenching revolutions, and others of that sort, are never to be accepted where a case of intervention is being discussed. We have already observed, unless our memory deceives us, that it would be highly agreeable to the diplomatists always to be allowed to make use of similar expressions to those, which are so well adapted to mislead the mind and to dissemble the argument. But this bad habit of theirs should be combated by public opinion in every possible way. In the last century, whenever a monarch desired to go to war with another, he did not omit to descant upon his own and the common safety as being imperilled. Buonaparte laid hold of some other abstract and plausible phrases, very convenient for

disguising the truth ; he was always talking about the offended honour of France, importing the punctilios of chivalry into the region of public law, and without heeding that every nation which is jealous of its own honour ought, for that very cause, to be very careful of the dignity of all the others. In our own days, as we have before remarked, as well as in remoter times, diplomacy is very fond of preaching about the European equilibrium being disturbed or threatened. We conclude that hence it is most requisite that the occasions of armed intervention should be expressed in precise and particular terms, not general and indefinite. Principles, truly, are simple and universal, but the applications of them, varying beyond measure, as they do, in one or another emergency, demand the utmost preciseness and appropriateness. In case of an intervention, it is our strict duty to signify exactly what right of ours has been maltreated by the internal revolutions of another people, and wherein its liberty has transgressed beyond the sphere, not of morality and internal justice, but of juridical tolerance in its relations towards the other nations. Then, if the case in dispute remains as we at first assumed—that is, if the action exercised by that people abroad be confined only to the transmission of the spiritual efficacy of its example and opinions—it will be perceived that, in order to find a convenient and legitimate cause for intervention, new and strange

EXCEPTIONS TO NON-INTERVENTION ? 197

rights must be invented, such as the right not to be scandalized ; or, the right not to let certain doctrines and opinions, practised in another country, come over to shake the foundation of Governments which can hardly hold up against the ill-will and discontent of their subjects.

To bind up now, in one conclusion, all the reasonings which have stretched throughout this chapter, we may finally assert that, after having with our best diligence, distinguished, enumerated, and described the motives of armed intervention, as many of them as can be imagined and investigated according to human reason and probability, not one motive has seemed to us to be just, regular, and really legitimate, excepting that of opposing the wrongful intervention of others, and undoing the certain and immediate effects which it has induced. And this case is, indeed, one of which it may be truly affirmed, that the exception confirms and seals the rule.

CHAPTER XIII.

ARMED INTERVENTION FOR THE SAKE OF RELIGION.

IN the year 1655, when the persecution of the Waldenses was raging in the valleys of Pinerolo, Oliver Cromwell, Protector of England, sent to Charles Emanuel, the Duke of Savoy, a letter which was not severe or menacing, but full of urgent and most ardent remonstrances in favour of that Alpine population. The Protector's name was such a great one in those days, and British influence had under his rule so notably increased, that this letter did serve for that time to mitigate the atrocious proceedings by which the whole of Protestant Europe had been grieved and scandalized. Let us suppose that the Protector had gone farther, and had threatened to intervene with English or Scottish arms; would he, or would he not, have transgressed the bounds of what was right? We must instantly answer, Yes; because there is no difference between that case of the Waldenses and the other cases under review. The odious cruelties and acts of vengeance perpetrated in the valleys of Pinerolo were nothing but one of the worst abuses of the internal self-rule of an independent State. No treaty or convention,

that we know of, with the other States had been broken, and no right of theirs had been injured. From Piedmont, indeed, was then issuing an ugly and a most blameable example of intolerance, and a voice had thence gone forth to be echoed abroad, which propagated doctrines and principles directly opposed to the Reformation. The effects of that invisible agency were indeed neither slight nor transient. Every Protestant conscience was afflicted beyond measure; the liberty of their creed and practice of their worship seemed to be in jeopardy over again. But all this did not alter the essential nature of the case; the kind of outside action which emanated from those events was not material and immediate, but indirect and spiritual. It must be admitted that, in affairs of religion, such influences are immensely more active and lively, and that one State cannot but be hurting, in some degree and manner, the interests of another, by persecuting or in any way injuring the faith which in that other is professed. But the interests which are thus hurt are those of the inner life and of the spirit, and they vary according to the opinions and feelings of men. They afford no fit subject, therefore, for juridical indictments preferred by one people against another. If it were otherwise, the whole of Europe would be in perpetual war, and that most exterminating and merciless war. Quite recently, we might have been able, by arms, to call England to account

for having, as she did, excluded the Irish Catholics from the rights and functions of political life ; whilst it would have been allowable, on the other hand, for Great Britain the other day to come with her fleet and to demand of Tuscany that the Madiai, husband and wife, should be released from their prison ; and to demand of the Pope that he should give the child Mortara back to his mother. For the offence, in all these instances, is of the same kind, and differs only in the intensity of the mischief and in the number of those who are aggrieved by it.

Meanwhile by necessity, no less than by the true sense of liberty and right, the principle of intervention on account of religious grievances has at this day been struck out of the code of nations. But the political world still persists in frequently and obstinately making an exception, with regard to the temporal kingdom of Rome. The whole of official Europe pretends to interpose *there* with a fair title for so doing ; and what appears the strangest is this, that the intervention is always said to be undertaken with a view to render that realm independent, and so to be beneficial to religion.

We have meditated long whether it behoved us to discuss this matter. On the one hand, it seemed that we might be exempted from so doing because the Roman interventions, if so we may style them, are not performed in the name of any maxim of public law, but in the name of certain real or fancied

necessities, and high motives of State policy. On the other hand, there lack not some eloquent and enthusiastic writers who perforce would reconcile with the law this singular species of intervention ; and it therefore belongs to the publicist to display, so far as is needful, the inconsistency of their pleas. The subject has indeed presented itself to our mind as having become a vast one by its diverse bearings both upon religion and politics, and also by its involving a thousand incidental questions which came in our way, and each of which acquired size and importance from the solicitous and angry controversies to which it had given rise. In fine, we did not conceal from ourselves that this discussion is amongst the most delicate and difficult ones of our time : not indeed from its verities being abstruse and recondite, for, on the contrary, they are manifest and plain ; but from the blind and obstinate notions, the vehemence and choler of the many contradictors ; wherefore to investigate such a theme, at the present day, without provoking somebody into a passion, is quite impossible, and whosoever will treat of it cannot escape the epithet of impious or fanatic.

But all this notwithstanding, since it is so wildly mistaken by the sects and factions, and since there are some who endeavour to convert it into an essential part of European public law, we will not avoid this opportunity of dealing calmly with this vexed subject, studying more than ever to be clear

and precise in brevity, and furnished, by the principles already set forth in this book, with that cord of Ariadne, which may, through such a labyrinth, guide securely and speedily him who therein sets foot.

Here let us, before all things else, just look at the mere and entire fact as it exists. The Catholics have an ecclesiastical arrangement and a gradation of their hierarchy, one of the most skilfully contrived and put in execution that could be in the world. The visible head of all that is the Pope, who has grown from time to time in power and prerogative, so that he now exerts almost an absolute dominion over the whole of Catholicism. Now it happened that about the beginning of the eighth century of our era, the Pope joined to his supreme sacerdotal authority also the lordly and monarchical authority over certain populations of Latium, and by little and little he afterwards spread it wider, as far as the confines of Tuscany, of the kingdom of Naples, and of Venetia, commanding at present somewhat above three millions of Italians. Comparing this monarchy with most others, we do not perceive that its titles of ownership are less sound, or have been worse acquired, than theirs; in its antiquity, it certainly exceeds almost all the existing monarchies of Europe; and in Italy the State of Venice alone, if it had not perished in 1797, would have surpassed it. The Roman people did, it is true, more than once expel

these its kings in the stole and surplice ; and several of the provinces, as Perugia, Ancona, Forli, Fermo, and Bologna, it proved necessary at different times for the Popes to conquer and subdue, either by their own arms or by those of foreigners, adding thereto compacts and promise of public guarantees, which were afterwards forgotten. But this has also been beheld in other monarchies ; and in the last two centuries, the temporal reign of the Popes became a quiet and easy one, and the people accepted it with perhaps greater resignation than the other peoples showed towards their own lords. The national spirit as yet was sleeping at the bottom of their soul, and the incessant need of public liberties was but little felt and that by few. Theocratic government, the worst of all governments, did not at that time press upon the Roman provinces alone, for abbots, bishops, and archbishops were then exercising it over several German provinces. The heavier part of the expenses at Rome was supplied by the treasure of the Dateria, which made the taxes there lighter than elsewhere. The communal franchises were large enough to appear in those days sufficient. All things were kept separate and dissimilar ; privileges were frequent, and exemptions more so, for which cause that union of wills and purpose, which is now to be seen in the people, was impossible. No army was paid for ; and although the foreign troops might traverse the State without opposition, because it was

undefended, nevertheless, as this very rarely happened, and as the having to contribute but little to the treasury continued, its subjects were not displeased to remain unwarlike. The Government, not being then attacked or threatened by anybody, and seeing that, to all appearance, sufficient respect was paid to religion, wore a mild and indifferent aspect. It was equally careless in its financial administration, and its debts became exorbitant, but subsidies and numerous other extraordinary supplies came to its aid. The laws which it made were very many, and very confused ; or rather each head of a department promulgated his own laws, at his own pleasure ; but they did not last long, they were not obeyed, and custom, whether good or bad, was the controlling power in all things. In this fashion the temporal Government of the Popes subsisted before the French Revolution. But from and after the last few years of the eighteenth century, down to the present year 1859, the circumstances of that State have undergone a most material and an irremediable change. The minds of the population are now become so thoroughly alienated from the ecclesiastical Government that we are compelled, though speaking of a country ruled by persons of our own nation and not by foreigners, to declare that there is no political *régime* in Europe more detested and despised than this. Since the Restoration, that is, since 1814, those provinces have revolted four times, namely, in

1815, in 1831, in 1848, and in 1859. Of these four several insurrections, three were crushed by the powerful intervention of foreign troops, which have already been quartered in the Roman provinces, as somebody remarks, not less than twenty-one years altogether, though with some intermission. The fourth insurrection has now occurred, and it still continues at this moment whilst I write; and although, as yet, the result of it is still uncertain, there can be no reasonable doubt of this, that it does not tend to extinguish itself, and that the mercenary arms of the Pope will not be able to extinguish it, for even to subdue Perugia and to drench that city in blood would have been a feat beyond their powers, if the French garrison had not relieved them of the charge of holding Rome. The populations of the States of the Church have therefore shown, in a way perhaps the most resolute and the most persevering that we can read of in history, their unwillingness to tolerate any longer the clerical government; and it is certain that, if their numbers were adequate to resist the foreign occupation, they would have shaken off from their necks the yoke of that singular kind of a reign, at least forty years ago. It may thus be likened to an old, battered, and worn-out cask, the rotten staves of which are still kept together by an iron hoop, which the cooper from time to time renews; the Swiss halberdiers, with the Austrian and

French battalions, are put there to do duty as this iron hoop.

Looking, then, at the bare fact of the matter, which no palliations or disguises can avail to hide, it needs but few words to show the bearings of our principles upon it. With regard to the excellence and legitimacy of governments, the form and origin of sovereignty, various theories may be entertained ; but all persons are agreed in saying, that both these things exist for the sake of the peoples, and not the peoples for the sake of government and sovereignty. And besides this, we have already settled that it is essential there should be in the State a certain unity of thoughts and wills, and a certain primitive, fundamental, imprescriptible liberty, insomuch that by violently suppressing this, and by entirely breaking up that unity, you may have an aggregation of men upon the same soil, but you can no longer have a State, and still less can there be for them an *own* country.

When foreign armies intervene, therefore, in the Roman provinces, by force, to subject that people to a most detested government, this is utterly inverting all the dogmas of social justice ; for it is pretending that the governed exist for the governors, and that the subjects exist for the sovereign, instead of *vice versa* ; and also that no liberty, and no essential unity of ideas and inclinations, are requisite for the State. Looking, then, merely to the dictates of law

and justice, we should say that the armies so intervening are employed in a task of coercion, than which nothing can be less rightful or less praiseworthy; indeed, we should say that human liberty and the independence of nations could not be more unworthily trodden under foot than by such a procedure as this.

But here the clerical partisans exclaim, that a very broad exception to the principle must necessarily occur. Even granting that the use or abuse which the Romagnol people is making of its own autonomy does not immediately injure any positive right of the other peoples, it suffices for condemning and for checking that conduct on its part, to consider that it deeply grieves, disturbs, and afflicts the spirits of more than one hundred and forty millions of Catholics, who do not wish either that the Pope should lose his royal crown, and depart as an exile from the Eternal City, or that his subjects should constrain him to acts which he refuses to perform. The holy Bishop of Rome, sitting at the head of the Catholic Religion, directing it by his own discretion, and punctually obeyed in it by all the faithful, it is necessary that he, more than any other living man, should be free and personally unrestrained. To exert any compulsion over that august personage, or over his deliberations, is not merely an injustice, a profanity, and a sacrilege, but it is tantamount to offering violence to religion, in every other State,

and to impeding each citizen in the entire exercise of his own worship, and thus it becomes a real and substantial offence against every man's positive rights, even according to those very principles which the zealous liberals and advocates of all sorts of freedom profess.

The reader will give me credit, I hope, for the impartiality with which I set forth the doctrine of our adversaries, even assisting it with a logic perhaps more subtle and coherent than is to be found in their writings. To all this we shall reply, taking one point at a time, as orderly as we can, though several incidental questions will arise by the way. In the first place, to mention the vast number of 140,000,000 souls may have a great effect upon vulgar minds, but this number itself cannot alter the essential character of a principle. And by that principle, if the minds of certain believers being afflicted, and their consciences distressed, constitute a fair claim for armed foreign intervention, this ought to hold good as well for a small number as for the greatest, equally for the case of the Catholics and for that of the Jews, who are kept at Rome in a kind of servile bondage, and not even secure of the possession of their own children.

I may pass by the exaggeration involved in the number of 140,000,000. We should have to subtract from it all those who have no religious faith, or who have it on merely natural and rationalistic grounds,

feeling indifferent and incurious about theological creeds, and these compose sometimes the majority, and elsewhere a very important section of the educated and instructed classes in Catholic nations ; whilst at the present day the proportion of those who regard the subject with indifference is augmenting even amongst the lower classes. To all these we must add those ardent and enlightened Catholics who ask in their hearts that, for the better exaltation of the Church, the Pope's temporal dominion should speedily come to an end ; or who, at any rate, do not vex themselves or despair when they see it falling into dispute and peril, well remembering, as they do, that the Pontificate was never more sacred or more glorious, and that Catholicism was never richer in conquests and triumphs than it was in those ages when the nuptials of the sceptre and crosier had not yet been celebrated at Rome. Taking the numbers of these different classes into account, I think the 140,000,000 above mentioned must undergo a very considerable deduction. But I repeat that whatever be the total number of those interested in the question, although it certainly has a great influence on the imagination, and thereby on the course of human deliberations, it does not weigh the least in the balance of principles.

If we go by what the clerical party say, these two things—the integrity of religion and the liberty of the Italians in the Romagnas—are not compatible.

In order that the conscience of every Catholic may continue in security and repose, the Pope must reign, and reign as an absolute monarch. If he cannot do whatever he chooses, there is great risk that his ecclesiastical administration also may be affected, that some of its acts may be hindered, its deliberations be perverted, and those responses falsified which, as though divine, are styled the Oracles of the Vatican. What is the Catholic flock to do, when its pastor has been deprived, no matter how, of his free discretionary power to conduct them in the paths of salvation and grace? It ultimately involves this consequence, that the operation of the faith itself is to be half interdicted in every Catholic State, and hence that the most sacred of all liberties, and the most inviolable of all rights, are to be meddled with !

It might be sufficient, in order to overthrow this emphatic attempt at an argument, to remark that if it were indeed true, as is alleged, that the operation of the Catholic faith is not compatible with any political subjection of the person of the Pontiff, then those which really were the fairest ages of the Church would have been the most doleful, since in those times not only did the Pontiffs continue politically to be subjects, but certain of them, like Pope Gelasius, declared, as in a solemn epistle of his to the Emperor, that the mixture of the two functions, the monarchical and sacerdotal, was an

impious thing, a most evil device of the Devil's, and that the will of Christ our Lord was that they should be separate for ever.

But let this strange assumption of the Clerical partisans be received, for, as we have elsewhere noticed, it is the habit of Science to allow her principles to be tested by admitting all suppositions not contradictory with themselves. We nevertheless affirm that never can that right of intervention which our adversaries seek and desire, be derived from it. Say, then, that the work of faith and salvation *is* interdicted in every Catholic country. . But by whom is it interdicted? If it be done by the magistrates of the place, they certainly do gravely err, and you have much reason to complain of the infringement of a liberty and the violation of a right; but if it be done through a moral effect and by an invisible connexion with the proceedings of a foreign people, acting within the boundaries of its own State, and using or abusing its proper internal self-rule, then you cannot complain of anybody, or accuse anybody; since it is yourselves who, with regard to the faith, which is an inner faculty of man, and not amenable to juridical control, have relied upon the dependence of things which do for themselves depend upon the will and the choice of foreigners. Fancy for an instant, that some one amongst our fellow-countrymen had chanced to be born with those peculiar marks and moles upon the

skin of his body by which the inhabitants of Thibet are wont to recognise their Lama, who is, you know, that sole human individual in whom their supreme deity is incarnate and living upon earth; and then just fancy that by some accident the said particular citizen of our State, having offended against our laws, were duly committed to prison. Does it seem to you that the Thibetians would have a right to intervene by force of arms amongst us, to release their Divinity from our gaol, and to lead him off triumphant, alleging that without him the religion of Buddha is, as it were, annulled, and that the chief rites and sanctities of their religion are violated? True, there is as much difference between the two religions as there is between truth and error, as there is between the Pope and the Grand Lama, between Thibet and Europe; but there is no difference of kind in the bearings, upon these two cases, of the rational principles of equity and law.

Such fictions and hypotheses as these are, however, almost superfluous; for this profound and interminable conflict which some fanatical minds would fain discover between international justice on the one hand, and the exigencies or convenience of religion and worship on the other, does nowise exist; the fact being, as I have said, that nature and Providence have so disposed the concerns of religion, and those of political liberty, as never to offend or

contradict each other. This we might well believe, reasoning *a priori* upon abstract and universal considerations, and from the virtue of principles in themselves; but it will be satisfactory also to remark how the same truth appears most clearly from the facts, which I shall now straightway investigate, looking into the substance of the matter.

First it may be shown from the facts, that such intervention in Roman affairs is not less vain and futile than it is baneful and unjust. What is the object wished to be accomplished by foreign arms in bringing them in there? It is to suppress the liberty of the people in order to save the liberty of the Catholic conscience; it is to afflict the citizens in order to console the saints. Both these objects, however, fail to be attained. Most certainly, if the armed foreign intervention saves the Pope's person from popular pressure, it does not save him from the direct and the indirect domination of those to whom he is indebted for being enabled to resist the constant aversion of his subjects. For many years past, at Rome, at Bologna, and at Ancona, the Pope has but partly governed, and partly, the French and Austrian generals. The external tokens of an obsequious reverence do not go for much. They were not wanting on the part of Charles V. even when he kept Pope Clement VII. a prisoner in the Castle of St. Angelo; nor was Philip II. sparing of them, when Rome and the Vatican were laid siege

to by the Duke of Alba's troops. If Austria is restrained by a superior force, and if it is France who now persists in keeping a garrison in the Holy City, with regard to pontifical independence there is not much difference between these our times and those times which the Popes consumed at Avignon under the patronage of Philippe Auguste and his successors.

But, on the other hand, the conscience of good Catholic believers cannot fail to be grieved and deeply perturbed when they behold the Vicar of Jesus Christ returning to Rome by a road that is saturated with blood and strown with corpses, as it did happen in 1849 ; for nothing can be more alien than this to the spirit of gentleness, humility, charity, and mercy by which he who performs upon earth the office of the Redeemer should be warmly animated. The wretched causes of this intervention also must sadden and scandalize Catholic minds. For whereas, by the holiness, the virtue, and the wisdom of its Head, the Papal Government ought to prove the example and pattern of all civil Governments, they find it, on the contrary, so unable and unsatisfying for the ends of public life, that its people are obliged at every turn to revolt against it, and with mockery and imprecations to cast it down. It is very painful indeed for Catholics to see a prince, in the person of their Pope, thus hated and derided, for they cannot but fear (nor is it a groundless ap-

prehension) that this may reflect a sinister light upon the venerable character of their High Priest. And finally, it touches their heart to observe that there is no known limit to all this scandal ; since it is possible that the theocratic Government may be destroyed, but it cannot be reformed ; and not being substantially reformed, the people will continue, without ever a truce, assailing and striving against it, one generation, as we have seen, handing down to the next this terrible animosity, which, though devoid of all hope, and repelled by the might of foreign arms, lurks always in the heart and is never extinguished. Therefore, we say again, these double intentions, with which arms and violence are employed against the Pontifical subjects, have hugely failed. And who then will yet allege, that intervention in Rome and in the Romagnas must be admitted as a necessary and legitimate exception to the general rule, since, whilst it is an infraction of the essential principles of the law of nations, it has not even the excuse of certainly accomplishing the end for which it is undertaken ?

Perhaps some one will here object to us, that this end may be attained by-and-by, and by dint of more interventions ; or perhaps he may refuse to concede that the Pope's temporal government is a theocratic one, or that such a form of government is by its nature a very bad one, and incapable of amendment or amelioration. Now we call that

public *régime* a theocratic one, which governs and administers by the hands of priests, and under the continual influence of a peculiar and positive law, esteemed to be of divine origin and deemed to have been manifested to the world by a superhuman revelation. This is the case with the government of Rome. Laymen do, indeed, occupy some thousand or so inferior official posts; but the heads and supreme directors of every department and sort of command or administration are priests. The first code of that State is the Decretal of Gratian, of which one portion is divine, and the other portion emanates from a divinely instituted authority, being therefore held venerable beyond any ordinary human law. Now such a government as this is wont to impose orders and constraints not only upon the outer man, but upon the inner also; and whereas at the present day, every civil government limits its operation only to that which is strictly necessary for the safety and welfare of the State, a theocratic government, that of Rome, regulates the consciences and thoughts of men, lends the hand of power to the enforcement of ecclesiastical precepts, searches out and spies into the family secrets and all the most intimate habits of every man.

Thus, to mention a few particular instances of this, you are not left free to absent yourself from attendance at divine worship on Sundays, or to abstain from the confessional and the communion at

Easter, or to eat flesh on the fast-days, or to read any other books than those which are not branded by the Index. The liberty of the press is condemned as "execrable," and all other liberties are regarded with suspicion; every criminal cause, if any priest be involved in it, is taken before an ecclesiastical tribunal; and all schools are consigned solely and entirely to the custody of the bishops. With this theocratic system, it may readily be perceived, that private liberty ceases to exist, and that any constitutional or communal franchises, even if they were granted, must be null and void. Indeed, the Charter bestowed in 1848 by Pius IX. was by a single article reduced to nothing: this article being, that no one could propose any law or any regulation contrary to the purport of any of the canons. The canons, it is well known, attempt to prescribe rules for all the conceivable affairs of mankind; they are to be cited by thousands. If you would hope to change anything so provided for, were you even more meritorious than Pepin or Charlemagne by your services rendered to the Papal throne, you would hear the same voice obstinately reply, *Non possumus*. You must, therefore, either desist from any purpose of introducing any alteration in the substantial conduct of the Papal Government or else you must run into the manifest practical self-contradiction of turning, against the breasts of certain

others, those very weapons the use of which has been invited and undertaken against the people.

There is no other business in the world, there is no other controversy, in which we find such an affluence of discrepancies, absurdities, and paralogisms, as in this debate about the temporal power of the Popes; because the advocates of it have their argumentation all grounded and hinged upon three of the grossest of errors; which are these: that of making this case an exception to the doctrines and axioms of international equity; that of believing that the sword can avail to settle matters of faith or the perturbations of conscience; and that of expecting that, in the temporal government of the Popes, modern liberties can ever be joined together with the canon law, or the national spirit with the spirit of the Roman Curia.

But the contradiction which it is most incumbent upon us to remark, and which should be well and closely considered, is this. According to the writers in the *Univers*, the foreign troops enter the Romagna for the salvation of the Pontificate, of religion, and of the Church; which are most august and imposing names, magnificent phrases indeed, filling the mouths and ears of men, deeply stirring up their intellect and heart! But let us inquire if they be appropriate to this case.

We may suppose that the employment of these arms does attain its object, a supposition very remote

from the fact; and we will assume that no regard ought to be had for human liberty and justice, but that the interests of religion alone should be zealously cared for. Notwithstanding that, it behoves these new Crusaders to consider whether religion itself, and God, the infinitely Great and Good, can approve or wish for the use of such means. These proceedings are deeds of warfare; and in general, we think, that battle, bloodshed, slaughter, and sieges, disagree a good deal with the religion of Jesus Christ, and that it is never served or advantaged by them. And will Religion be likely to change her mind about these doings, for the sake of the Pope's temporal dominion? What if, instead of her valuing and cherishing that dominion, as something dear to her and precious, she should truly, after all, hold it in natural aversion? It is not quite impossible but God may refuse to uphold his Church upon the mixture of the two kinds of authority, sacerdotal and political, which Christ came to separate here below. The virtues of the prince and those of the pontiff are so different, that it is rash to think that God meant to conjoin them, for the welfare of Christendom. Perhaps, however, the Popes have found out how to harmonize them? Not they, indeed; for most of the vices and the disgraces with which, in several ages, the Papacy has been stained, must be ascribed to the thirst of riches and empire, and to the deplorably bad use of earthly

grandeurs. It would not be pleasing to us to dwell upon this theme, or to amplify it by more illustrations. Admitting cheerfully that the Roman Court has gradually mended, and has corrected some of its morals and habits of a former time, it would be only too easy for us to prove how continually its independence of thought and action has been compromised, since it has had to caress and to flatter the chief protectors and saviours of its temporal dominion. And heretofore, even in the quietest and most pacific days of the prelatical government, it has had to wind to the right or to the left according to the varying breezes of policy and statecraft. Should not all this give rise to some doubt, whether God does altogether approve it, and wills, by the intervention of bayonets and cannon, to confirm and to perpetuate the worldly kingdom of the Popes? At this very day, is it not strange and sad to hear a Pontiff, who is *Pius* in name and in his life, spotless and exemplary in his moral demeanour, denouncing his own subjects as impious and sacrilegious, for acts of theirs which are merely civil; and condemning all those, as stricken with the major excommunication, as cut off thereby and cast out from the bosom of the Church, who were the authors of those acts, along with those who have simply assented to them, being indeed the greater part of his subjects? To such excesses does the unhappy and deformed conjunction of the priesthood and the kingdom lead. May we

not then well doubt whether it has been intended and provided, or whether it has not rather been endured, by the divine goodness and justice? Nor can we refrain from noticing, by the way, one singular contradiction into which our new Crusaders fall; which is this: that they would make use of the sword to preserve intact the personal independence of a man who, according to clerical views, is the sole and only person in the whole world that has nothing to fear from external force. Because if, in all that pertains to the government of the Church and to the salvation of souls, he be absolutely infallible, force will never make him deviate one jot, nor will he ever bring the conscience of others into the slightest error.

But how is it about the pain and the scandal of seeing the Pope contended against, and how about the good which he will be hindered from doing? Certainly, this is an affliction and a mischief, though we forbear here to ask from whom it really proceeds, and who is most to be blamed for it. But for all this, we can never believe that it is approved by the counsels of God to seek reparations and compensations which are contrary to the innate liberty of the peoples and to the eternal principles of right; instead of these we must presume that another remedy and another mode of defence will in time be found. And with respect to evils and calamities infinitely greater than this, do not Catholics enter-

tain the same judgment as we do here? To their minds it must be a far heavier affliction, and an acuter sorrow, to behold the Christian world divided into several diverse, or rather hostile Churches, one of which cries *anathema* against the other. Of two hundred millions of mankind adoring the holy Gospel, sixty millions follow the Greek schism, and sixty millions more are split up into the various confessions bred of the Reformation; the remainder being Catholic; and yet this proportion, humanly speaking, will not be maintained, as the three nations, which most rapidly increase their populations, and multiply their colonies, are Russia, England, and North America, which are all heterodox. Nevertheless, Catholics do resign themselves to this great evil, to this permanent and frightful scandal, being full of confidence in the high designs of Divine Wisdom, and repeating to their souls the unfailing promise that some day all mankind shall become one fold, under one Pastor.

We do, indeed, feel convinced that, to such reasons as the foregoing, the ultra-Catholic partisans will never give way. If to contend against the plainest evidence might ever be esteemed an instance of chivalrous or praiseworthy courage, nobody could excel them in the renown of that species of magnanimous intrepidity. We do not admit, they all exclaim in chorus, that in religious concerns any evil is ever to be tolerated from the consideration

that God himself permits it to exist. It is the duty of man to render himself perpetually the instrument of God and of His Providence, with all the means, forces, and expedients that he possesses. We know that it is (thus we shall reply to them) ; but the point we must contend for is this, that the means and expedients, thus applied by you, should be wholly conformable to morality and right. Your principle, carried to an extreme, caused, as you are aware, the faggots of the Inquisition to be piled up, the massacre of the Albigenses to be ordered, and thirty thousand Huguenots in one day to be treacherously put to the sword. By that same principle, if you had sufficient power, you would endeavour at this very time to suppress by force of arms the German, English, and American heresies, nor would you spare the Greek *papas* and all that which is styled the Orthodox Church ; since never yet has Rome, or more properly the Roman Curia, consented to acknowledge that tolerance which was prescribed and promulgated by the Congress of Westphalia, and against which the Papal Nuncio immediately wrote his angry protest.

Perhaps, indeed, you will say, that the Greek, or the German heresy, though it be an immense grief and scandal to you, is one remote from your eyes, whilst the revolts and disturbances of Central Italy immediately affect you. If the Pope (for I will copy your own inflated and superlative

language)—if the Pope falls into the hands of the demagogues, then his crown and his sceptre are instantly converted into that wreath of thorns and that wand of derision with which the Jews invested the holy and suffering Nazarene, and then, again, to quote the great poet of the Middle Ages, we behold that outrageous spectacle renewed.

“ Ecco rinnovellar l'aceto e il fele,
E nel Vicario suo Cristo esser catto.”

And then, what is to become of the whole Catholic communion; and how can it provide for its faith and worship without impediments, distresses, and tribulations? Will it know how to find its own way in safety, when deprived of its commissioned guide, its living law, or rather the living word of God?

We have purposely repeated, with all that rhetorical flourish with which they are usually ushered in, these conceits of the clerical party, in order that we may not be reproached with citing them in such a manner as to abate their strength and vehemence. But the reasons we have already drawn fresh from the pure fountains of law refute them at once. We have shown that the remedies they would prepare result in as great an evil, or in a worse, and fail of the end they directly have in view. We have indicated some of the many contradictions with which this proposition is beset, and we have raised a very great doubt (though to ourselves a certainty of the

negative) as to the goodness and legitimacy of the undertaking, even with regard to the interests of piety and of religion. To dispose more abundantly of this matter, we have now only to observe how vastly the serious nature of the facts, which are made a pretext for intervention, has been exaggerated by party spirit, and how the actual state of the case has been distorted by those who would make it appear suitably to their doctrines and to their purposes.

In the first place, the people of the Ecclesiastical State have never combated the true spiritual authority of the Pope, nor have they ever impeded him in the exercise of the functions simply of the High Priesthood. I should like now to be informed, what nomination or confirmation of bishops he has been prevented from making, what bull or brief that he has issued has been denied its publication, what instructions or dispensations, what indulgences, graces, pardons, or benedictions he has been forbidden to impart. After the flight of Pius IX. from Rome, in 1849, and when there, as elsewhere in Europe, things had arrived at a desperate extremity, the populace did commit some outrages and acts of criminal violence upon the persons of several ecclesiastics ; but not one of the clergy was in any manner impeded by the rulers of that day in the public professions and exercises of religion. Yet those few days of republican frenzy, within a

besieged city which was enraged at the impending necessity of surrender, could nowise be cited as an example. The Catholic world has witnessed the effect of more than one such terrible but transitory moments of emergency elsewhere, upon occasions with which Italy had nothing to do. When the clergy of France were persecuted *en masse*, which was some time before the captivity of Pius VI. took place; or when at Madrid, in the reign of Queen Maria Christina, churches and convents were burnt down, and the monks, endeavouring to escape, were thrust back into the flames; or when Warsaw was recaptured, and throughout Poland the nuns who resisted the Eastern Schism were chastised by scourging, then was the Catholic religion indeed exposed there to a conflict, although it was not by the person of the Pope being imperilled, nor was it by the Romagnas being up in revolt. One thing, however, we do hold for manifest and certain; and it is this, that the populations inhabiting the Roman State, whilst demanding with a rare perseverance their civil and political liberty, have never intended in any respect to impede, or to alter, or to throw any difficulties in the way of the exercise of the spiritual dominion of the Pontiff; and the potentates of Europe would obtain for this every possible guarantee, whenever, in exchange for it, civil and political liberty should be guaranteed and assured.

On the other hand, we may in passing be per-

mitted to remark, that this assertion—namely, that the Pope cannot act as pontiff unless he be a monarch with an absolute reign ; and that religion is hurt in its substance and in its integrity, whenever all the actions of the Pope may not be entirely free and spontaneous—does appear to our mind extremely injurious to religion itself. What then, has not the Church determined all her dogmas, her moral law, and her discipline ; and the national Churches, with their bishops and primates, are they not sufficient for themselves ? We need not refer to the Greek Church, which although for ten centuries past she has not known the Pope, nevertheless, excepting that controversial point which divided her from Rome, has preserved her integrity of creed, of her moral precepts, and the substance of her discipline also. Such an instance might be not unfairly objected to as inappropriate. But we may refer to the Latin Church during its many periods of what may be called interregnum, which have erewhile been prolonged and may again be prolonged for a tolerable while. Has the Church thereby suffered any detriment, and is she left, like a ship in a storm, without a compass and without a pilot ? Did she go to wreck or was she confounded when, in the first ages, her most immaculate and her most glorious, the Bishop of Rome had conceded to him scarcely so much as a certain honorary prerogative over the other bishops ? And during the forty years of the

Western Schism, when nobody could well say which was the Pope of two or three then wearing the tiara, was the faith lost, was doctrine obscured, were the councils prevented, was religious worship forbidden, were the salvation and the sanctification of souls rendered more difficult? Read the book of the Bolandists, on the contrary, and you will find in those times an abundance of saints, of blessed and venerable personages, as great as appears recorded in any other age; and far greater plenty of them at that time than we can boast in our own age; the cause of which, I think, is hardly to be ascribed to the tumults and insurrections of the Romagna.

All this, it is true, the clerical declaimers will either deny in the mass, or else they will at any rate refuse to let anybody presume to teach them what is the pure and germane nature of Catholicism and of the Papacy. They will have, at any cost, the full and absolute monarchy of the Sovereign Pontiff; and they carry the idea of his infallibility to such an extent, that now-a-days it is not very clearly understood whether it belongs to him or to an œcumenic Council to declare a new dogma. In like manner, they rejoice to see the episcopal power more and more diminished, the national Churches as it were vanishing, and the faculties of the primates and patriarchs almost annulled, the popular nomination of bishops and parish curates suppressed. In this supreme peril, not indeed of religion, but of the

Roman Curia and of the Canon Law, they wish for a dictatorship, they invoke a dictator, and they do not reflect that the great man to assume the dictatorship is wanting, and that out of the College of Cardinals, such as it has long been, none can come forth except narrow souls, of slight elevation, and certainly inferior to the necessities and expectations of the age. And if any extraordinary ones, like Gregory VII., Innocent III., Alexander III., and one or two others, could make their appearance, do you think they would follow up the theories of the clerical faction? The very first thing with them would be, to sympathize profoundly with every noble aspiration and generous thought of their time, and to feel that breath of Christianity with which the age is glowing. They would cherish the plant of liberty in every form and variety, as springing all from the foot of the Cross. They would choose to reign above all by the power of ideas, the lustre of science, the loftiness and magnanimity of their designs. Nothing would appear to them more to be abhorred, or more sacrilegious, than deeds of violence done in the name of God and of religion. They would blush, as for the very worst of humiliations, if they found themselves protected and preserved by a foreign sword; and to those who should invite them to hold a sceptre bathed with the blood and tears of their own subjects, inflamed with anger they would reply, "Depart from me, Satan!" In this way, they would dispose of

the whole question, and all the difficulty of securing their independence would be got over ; since the person of the Pope would thus by itself be rendered innocent and venerable to all mankind, and the whole civilized world would be willing to take care of it, deprecating as iniquitous and barbarous any sort of coercion applied to a sublime though undefended majesty which asks and desires nothing but to extend its empire over the hearts and within the spirits of men, and which employs for that purpose only the virtues of example, teaching, and persuasion.

CHAPTER XIV.

CHURCH AND STATE.

WE are then confirmed in our opinion, or rather, let us say, in our faith, that Providence has not so ordered the moral universe as to bring principles into an interminable discrepancy with one another, and constrain mankind, in the present instance, either to leave religion undefended and endangered, or else to infringe the inherent liberty of the peoples by the violence of armed interventions.

The subject of which we are treating, however, is one which we have carefully regarded from every point of view, and there are some points of view which we have deferred to this chapter, for the better arrangement of this discussion. Their turn has now arrived. Our adversaries, then, allege that the rule of non-intervention preached by us is one which ceases to have a legitimate application to the internal affairs of the Roman State, because that State is closely and perpetually bound up with the solemn and universal institution of the Church; and this has a share in the public law at least of every part of the Catholic world, and is mixed up with the chief functions of social and political life. But the


sequence of these opinions should be exposed more at length.

Existing among the nations, and independent of them, is the Catholic religious world, which is a vast society of men, united in spirit and in will, and perfectly organized. It is wanting in nothing of what constitutes a life at the same time universal and peculiar, a distinct and separate association. It has its own possessions, its own laws, and its own code. It has tribunals, magistrates, public representatives, an unity, a hierarchy, a supreme Head. What more or what better does civil society possess? This congregation of the faithful embraces the States within itself; but it cannot, on the other hand, be contained within any State, and it towers above them all, as far as that which is celestial overtops the earthly, as far as the Eternal is above the temporal, and the Divine excels the human. It is not, therefore, incorporated with the merely secular functions of civil and political society, for the will of Christ was to divide the two ministries from each other, and he came down here purposely to lay the foundation of the spiritual and miraculous ministry of his Church. But as the soul dwells in the body for its governance, and as the latter feels itself attached to the former, so the Church, and the Pontificate, which is her base and her summit, do moderate the course of civil and political affairs in all that is connected with religion and morality; whilst the

lay government of States, on the other hand, continually finds itself mixed up, though in an inferior capacity, with the interests of religion, and with the sublime and mystical rule of the Church. Thus among Christians we have this twofold ministry, not to be confounded together, of the Church and the State, yet connected most closely with each other, and the second of them being of necessity subordinate to the first with regard to all matters of faith, all the practices of worship, all moral doctrines and ecclesiastical jurisdiction.

Seeing all this, it does not seem to be at all feasible, as above remarked, to apply to the Roman State the principle of non-intervention, or of the absolute internal liberty of nations. For that State and its people are an integral portion of the Catholic world, and living members of that moral personality which is named the Church. Hence, therefore, as in any other vital organism, it may sometimes occur that, in some respect, the good of the part has to endure a hurt for the greater good of the whole, so the Roman populace may have to immolate its political liberties, so to speak, to the triumphant and universal advantage of the Catholic world, and more immediately to the Papacy, which it obeys with both kinds of subjection and homage.


We have thus attempted faithfully to report the notions of the Clerical party upon this subject; they are in a great measure the same as those of



Bellarmino, who endeavoured in his book, *De Pontifice Romano*, to reduce the haughty theories of an universal theocracy to a more modest and temperate system.

In truth, however, the questions relating to the ecclesiastical jurisdiction remain quite distinct from this other question of the secular monarchy of the Pope. Bellarmine himself has diligently separated them. He does not ascribe any superhuman origin to the Pope's temporal kingdom; and he does not even modify, with regard to this, his general doctrine as to the civil sovereignty, which he allots in its source to the people; and for this cause it was that his book had a very narrow escape of being damned for ever by the congregation of the *Index Expurgatorius*. But the opinions which we have reproduced in the foregoing paragraph, about the juridical relations between the Church and the State, attach themselves to the existence and form of the temporal sovereignty of the Popes, through this supposition, that the suppressing or transforming of that sovereignty would entail very serious detriment to the ecclesiastical jurisdiction. Without at present denying that presumption, let us examine what this ecclesiastical jurisdiction actually is, as well in its reality, as also in its idea. If we take it up in the former view, as a reality, and if we investigate the whole history of the Middle Ages, we must admit that, until the period of the Reformation, the

Canon-law had a large share in the public jurisprudence of the nations. A kingdom or a republic might seek to diminish or to moderate the ecclesiastical jurisdictions, immunities, privileges, and interferences, but never to reject them in the mass; and no head of a Government had the boldness peremptorily to declare the full and absolute independence belonging to the State with regard to the Church. Hence, in the questions which were then agitated, it was not at bottom the cause of spiritual freedom that was maintained or contended for; but it was demanded, on the one side, whether the State should dwell in servitude to the Clergy, and on the contrary side, whether the lay-powers should command the Clergy, and give orders to religion. In our own days, since the whole controversy has fallen under the examination of cool speculative reason, all disputation about the respective limits and competency of the two jurisdictions is put aside, and, instead of that, it is eagerly asked whether those two laws do really exist, or whether there is but one law. Most writers, indeed, do not recognise any law as existing in the world, except the natural law and the law of civil jurisdiction. They consider, also, that the mixing up together of the two codes, the sacerdotal and the lay code, was characteristic of the infancy of society, in proof of which they cite the most antiquated and rudest examples of legislation. Quite differently do those authors



think who place at the top of all science and of all discipline the fact of the Christian revelation. A noted Italian philosopher, Antonio Rosmini, applied himself to demonstrate that the Church of Christ is the very society of mankind itself, exalted by Him into a perfect and theocratic society, immensely superior, therefore, to civil society, and having Christ Himself for its eternal Lawgiver and the Author of its institutions. Wherefore, all that portion of the canonical jurisprudence which is of apostolic institution, or which largely partakes of it and is the immediate consequence and application of it, has the perpetual and unalterable force of law, and the civil and political legislation ought with docility and exactness to conform thereto.

This is still the doctrine of Bellarmine, which the holy Roveretan priest, on the one hand, tempered and restricted in conformity with the spirit of his age, and fortified, on the other hand, by more subtle abstract considerations, and with a robust logic. But everybody must perceive that here the subject is transported into quite another region, and we are dragged away from jurisprudence to the chair of theology. Nor is this all; for, amongst the divines themselves it is an old question, and one which seems not yet to be settled, whether Christ did ever intend to establish anything which should pass beyond the bounds of the purely spiritual, or create an ecclesiastical law and jurisdiction. Any-

body who will search into the contest, so fiercely carried on between the Venetians and Paul V., may observe that, not only amongst the Protestants, but amongst Catholics too, opinions have more than once been divided upon this matter, which was battled over with a great quantity of arguments, authorities, and allegations on either side. Happily for us, we are nowise obliged to thrust ourselves between the conflicting parties; for it only imports us to know whether the said ecclesiastical or theocratic jurisdiction taught by Bellarmine and by the Abbate Rosmini be incorporated in any way with the present European law, or whether it form part, at least, of the public law professed by the Catholic Powers in common.

So far as concerns general European law, the question is at once settled by the fact, since it will suffice only to look around us and compare the diverse legislations of the several countries. Russia does not admit the Roman Pontificate; several Protestant countries do not admit the Episcopate; England does not concede to the clergy even matrimonial jurisdiction. At this day, since even the Ottoman Porte itself now enters into what is called the European concert, it becomes quite evident that no Christian institution whatever, as such, comes within the specific determinating elements of the European law of nations.

In answer to the other inquiry, with regard to

the Catholic nations, we think it may be enough to remark with how great difference the Canon-law is received among these nations, and how the tendency everywhere is to withdraw from it just that character of public and legal authority. At any rate, those portions of it which yet remain in Catholic countries have no force except within each particular State, and as appertaining to the body of its laws. They cannot, therefore, be imposed by one State upon another, nor do they form any parity or community of law between the States; and nothing would appear more odd than to see Naples or Spain coming forward to interdict the other Catholic nations from liberty of worship or from civil marriage.

The conclusion of the whole matter in this particular discussion is that, whatever connexion or dependence you may please to recognise between the lay dominion of the Popes and the Canon-law, you will never be able to deduce from it, as the Clerical controversialists would do, any right of intervention in the Ecclesiastical territory, in the name of the common European law; nor yet by virtue of the particular systems of legislation in the Catholic nations. Armed intervention in the internal affairs of a people is not an act of merely special concernment, or indifferent for the common interests; but it is a matter which involves the very substance of the universal and perpetual law,

and therefore it can in no case be resolved upon by the agreements or conventions of certain potentates to the exclusion of others, without the others being legitimately authorized to disallow and to prevent it.

Here, then, might this division of our argument be ended ; but it will not be superfluous to prolong it a little bit more, in order to show what are the conceptions of our own time about the relations between Church and State, since that assuredly is not the least important innovation which the present age is making in European law.

The design which is entertained then in the minds of the majority of thinkers in our own day is, not to abolish the whole canonical legislation, but to restrict it to a dominion in men's consciences alone, out of which it never ought to have issued ; nor should it ever have demanded to transform itself into public institutions and judicial prescriptions, with the co-operation of the civil magistrates, and of outward compulsion. It is beyond doubt, that Christ our Lord did found a pure and admirable theocracy,—that is to say, an universal and eternal association of all souls conjoined by the bonds of faith and charity ; and that He did constitute a holy and invisible Kingdom of the Divine Word in the inner part of man ;—a sublime, an immovable Kingdom, with respect to which all things that exist are subordinated together, and of which it is but a small thing to say that—

“*Imperium terris, animos æquabit Olympo,*”

because it is an empire which transcends the remotest stars of the firmament, spreading for ever into the power and the glory of Infinite Being. But for this, Christ renewed the hearts and thoughts of men ; He purged their intentions, He strengthened their judgments, and called as the citizens of His Kingdom all mankind who are of *good will*. Having effected thus prodigiously the inward regeneration of our existence, He bequeathed to human wisdom, to the experience of every time, and to the gradual, laborious work of reason and of knowledge, the task of applying this inward perfection to all external ordinances, and to all the various shapes of civil and political congregation. Nothing can, therefore, be farther off from the true character of Christianity than to confound the religious and the lay administrations together, and either to put the State in subjection to the Church, or the latter to the former.

The idea of Law, in proportion as it becomes intellectually clear, distinguishing more perfectly its limitations and its functions, must fix deeply rooted in the thinking mind these two grand convictions ; the one, that civil law is necessarily restricted to the common protection and defence ; the other, that the said civil law venerates and helps religion, but does not command it ; availing itself of the substantial morality thereof, but not privileging any of its forms. All the rest is to be left to the liberty of private

persons, to the mysterious and intimate operation of faith, to the incessant progress of education and public instruction. And I hesitate not to say, that these two maxims embody perhaps the best practical learning of the modern world, and that they beam with the light of true wisdom, which I take to be a profound acknowledgment of principles, well weighed and studied in the whole chain of their consequences. Is it not, indeed, a legitimate as well as a salutary rule, that natural liberty should only be abated just so much as is needful to the safety of our social life—that is to say, just so much as preserves liberty and renders it possible? Again, is it not equally legitimate and salutary to lay down that, wherever the coercion of the law may intervene, is wherever the express or tacit assent of all minds, not quite departing from common sense, may concur? Of course, it runs in everybody's mind that theft is not lawful, or fraud in bargains, or calumny, or injuring and offending the persons of citizens. But where doubt springs up or judgments diverge, where the human mind strikes out different paths, and the moral sense does not give a secure and immediate response, there all coercion, and hence all interposition of the majesty of the law become inopportune and inconvenient. The religious nature of man is thus entirely withdrawn from the control of positive legislation, and consigns to the ministry of higher and more venerable authorities. There is nothing which the civil and political

law more ardently desires, than that the citizens should be zealous and assiduous cultivators of religion ; but to stimulate and impel them that way is the office of a different order of persons, acting by the efficacy of quite other means, always within the sphere of private rights, and keeping every liberty inviolate. The ancients thought, and the middle ages thought, that human spontaneity of conduct was ever blind and wrong, and that in everything the laws must operate. In our days, thank God, we are provided with a great principle of social science, which consists in well understanding that the true, the best, the supreme legislator of human society is Nature herself, who has marvellously inclined and pre-ordained things to the slow, but certain, toilsome yet pertinacious development of all our faculties, and to the final concord of interests, opinions, and wills amongst mankind.

What, then, is the prime type of perfection, towards which human and Christian society is tending, with regard to the relations between the State and the Church ? In our opinion, it is tending to this, that the Church should never have need to go beyond the scope of private rights, or to demand any franchises or guarantees better and greater than those, which secure to all their public liberties, and the liberty of every single citizen. And the more independent in their proper functions the State and the Church become, the more should their spiritual union

increase, their reciprocal love and esteem, the identity of their principles, the elevation and holiness of their ends. Especially is it desirable that all discrepancy between ecclesiastical precepts, and what the civil law commands, should disappear, which will certainly be done when one and the same rational rule of morality shall inspire the prescriptions both of the one authority and of the other. I am here mentioning things which are not only familiar, but in themselves are obvious; and I do so only because they must be an element of no slight importance in the new European law, which is being matured in the conscience of the peoples, and the chief lineaments of which this book portrays.

Every society, for the attainment of its proper end, does in truth require certain means; and those means cannot always be purely of a spiritual and interior kind. In general, therefore, the Church has a right to those material and external means which are needed for the fulfilment of her end. But sanctification being entirely a work of the mind, and the Christian religion being the purest and most immaterial that has ever existed in the world, and everybody being allowed, by civil and political liberty, the most entire use of all that he possesses, it is not necessary for the Church to be powerful by riches, jurisdictions, and arms; but rather this proves contrary to her nature, and to her essential and perpetual ends. It is but just that the ministers of

the priesthood should live by the priesthood, and that the faithful by their donations should provide for this. But what amounts to an injustice is this, that out of the vast Christian family should be formed a congregation formidable and perilous to each particular State, and putting into the hands of a few, or rather of a single person, the discretionary government and arbitrary dispensation of the patrimony of Christendom. It is peculiar to the nature of spiritual concerns, that the most intimate union of thoughts and wills, though it be propagated and commonly shared among the greatest multitudes of men that can ever exist, remains without damage in its effects. But it is not the same with the accumulation of worldly goods, the possession of which by some is privative as regards others, and the use of which too easily becomes corrupting. Also, if the control exercised by one person over a countless number of minds and hearts is an immoderate power, which should be left to the infinitely Great and Good Being alone, it becomes quite intolerable when it passes over from the region of ideas into that of the facts of our civil existence, and arrogates the right of judging as to secular matters, and arms itself and predominates with material and coercive sanctions. Certainly, in such a case, we may say that there is a State within the State ; there is an association of men, which is not only alien to that which is the properly civil and political association, but one which may become, and

which often has become, much more powerful than the latter, and which is operating for diverse if not for contrary ends.

But we thank God that this apparent conflict of their ends in view, though it seems to exist in such a state of facts, does not exist in the real essence of things, not in that of human and social realities and still less in the essence of the Christian religion.

The spirits, opinions and affections of men may be made one; but temporal estates are multiple, and the laws moderate the uses and the limits of their several possession. Temporalities therefore, speaking in the abstract, are within the State, and ought never to be dependent on the will and caprice of a foreigner, however holy and authoritative he is supposed to be. So then, every command coming from abroad, which puts itself in contradiction with the laws of the State (except in case the latter be in themselves quite immoral), is void and vain, and it is the duty of the civil power to resist it.

I repeat, however, that the farther progress of civilization must render such discord more than ever impossible. Religious, as well as civil, prescriptions will have to emanate from one and the same doctrine of morality, so as never to get into contention with each other. The spiritual Christian unity, on the other hand, will feel less and less need of its being represented and governed by a single man and by an individual will. And so likewise will any religious

hierarchy, issuing from the people, remain conjoined with the people, and will never more presume to possess any interests, rights, or jurisdictions peculiar to itself and altogether alien from those of other orders in the State.

In this manner, whilst it is desirable that the Christian society should, in respect to spiritual concerns, extend itself to the whole human race, and compose one holy moral unity, its material instruments remain subject to the civil laws of each State, and can never, in the name of free and universal association, get into the hands of one or of a few foreigners, whether for possession by them, or merely as to their disposal and use.

So likewise, the perfection of this society does not require subjection to the command of any single man, but only of Christ the Lord, and to the pure and eternal reason of the Gospel. Dictatorship is a transient remedy, not the normal and perpetual condition of any human company. The Pontiffs therefore, returning to the observance of the principles of the Gallican Church, and confining their authority only to the strict execution of the laws of the Church Universal, will cease to make themselves threatening to civil and political authorities, or to create for themselves a State within the State. The laws of the Church, moreover, usurping nothing of secular power, and inculcating nothing diverse or opposed to the common moral law, the universal reli-

gious society will thus be prevented from ever being discordant with the particular political societies which compose kingdoms and republics.

From all this we conclude anew, that the Church may spread and flourish by the sole use of those liberties which are common to every private citizen, and which are sufficient for every private association. Hence the Canon Law ceases to exist as a part of public law; and hence, of its two principal portions, which are, the rule of matrimony, and the rule of benefices, the former is to be determined by reference to the internal law of the human conscience, and the latter is to follow such ordinances and limitations as the civil law of each particular State may prescribe for the possession and use of property.

It now remains for us to assay the worth of that sentence above quoted, by which the clerical advocates conceive that they have crowned their demonstration of the pre-ordained and eternal servitude of the Roman populations. These, we hear them say, are but a small part of a great indivisible whole, which is the Catholic Church. Now it does sometimes lie in the nature of things that a little part should be deprived of some advantage of its own, for the good and for the safety of the whole. The good and safety of universal Catholicism involves that the Italians dwelling between the Tiber, the Tronto, and the Adriatic Sea, should not be enabled to use either their inward or their outward autonomy.

It is therefore just that they should resign themselves to this disadvantage, as in America the little district of Washington resigns itself, for the good of the whole Republic, to not enjoying its political rights as a State, and to availing itself only of the common franchises of the Federation.

If this be your most efficient argument (I reply to them), we can well imagine how much force and strictness there may be in your others ! It is well for you, indeed, gentlemen, that you are not here tasked with an academical exercise in dialectics, or put to working out a syllogism or a *sorites* ; else you would be punished like scholars who are caught grossly erring against the plainest rules of the art of logic. Your major proposition, indeed, affirms that, sometimes, a certain peculiar interest of the part is impaired, without injustice, for the good and for the salvation of the whole ; and this sentence, generally speaking, may be accepted as sound. In the minor proposition you state, that the Roman populations, insomuch as they have religious faith, are a small part of the great whole of the Catholic Church ; and this second member also of the syllogism may stand, and need not be found fault with, if we are alluding to official and outward religious profession, so as not to have to deduct the number of unbelievers (in the Romagnas a very large number) who inwardly do not belong to the Church. From these premises, the true and proper consequence is now to be drawn ;

but you draw a false and sophistical one, by means of an equivocation in the use of words, which is reckoned in logic amongst the biggest and clumsiest of blunders. You conclude by affirming, that therefore the Roman populations ought, if need be, to sacrifice their political autonomy to the prosperity and salvation of the whole Catholic Church. But if those populations by effect only of their faith are a part of the Church, that is to say, of a spiritual whole, they are bound also to no other kind of sacrifice than a spiritual one, analogous, namely, to the nature of the part and to the nature of the whole; and if it be a spiritual sacrifice, and suggested by faith, it is quite voluntary. How then does the sacrifice of political liberty and independence come in here? How do the compulsion of physical force and the intervention of arms come in here? If anybody said to you, "Sir, you are a scholar, and, as such, you belong to the great republic of letters; and for the benefit of this whole, of which you are a part, it is right that your lands should be forcibly sold or bartered away from you," what sort of reasoning would you call that? But you put forward the example of the little district of Washington, in the United States. That very instance but exposes your sophistry; for the little district of Washington sacrifices its own political rights as a State, to the greater right and the greater benefit, also *political*, of the entire Republic, of

which that district is a part, and from which it derives the manifest advantage of being the glorious seat of the Federal Congress and Government.

As for the assumption that the servitude of the Roman populations is really useful or at all necessary to the security and prosperity of the Church, we may refer back to what has already been said of it. It should here be mentioned that, even if that Clerical proposition could be maintained, the servitude of the people inhabiting the dominions of the Church does not suffice, but it draws in after it that of all Italy. For if, to save the Pope's absolute reign, the gates of Italy must always be thrown open to all sorts of foreign arms, how can the Italian territory maintain itself inviolable, and how can it be otherwise than subjected to the wrongful aggressions of foreign States?

But it is said, that the Romagnols enjoy some great and magnificent compensations; that everything Rome contains is due to the munificence of the Popes; its leisure, riches, monuments and works of art, the affluence of pilgrims, and, above all, its importance and dignity. A brief answer may be given to this ingenious falsehood, which has a very plausible aspect. Did the Popes make all that? even the remains of ancient Rome, the Pantheon, the Colosseum, the Mole of Adrian, and so forth? And do visitors come to Rome only to admire churches and relics? But let it be as the clerical

apologists aver. We will only ask them this question: the great favours which the Pontiffs confer upon Rome, are they performed only for her, and for her own sake, or still more, for the increase and ornament of religion? It is only a half-gratitude, then, that Rome owes to the Popes. And, secondly, was Rome interrogated, at the beginning, when the Popes first came to inhabit her, about her intentions, and particularly about this proposal to exchange her liberty for money, churches, and other pomps and commodities brought to her by religion? If there was no bargain, or agreement, why pretend to bind her? But, moreover, such an agreement, even had it taken place, would have been an enormously injurious one, or, rather, quite illicit by its very nature, as we said at the commencement of this book; because everything is within the competency of a people, excepting to annul its own liberty. In the third place, how do you know what would have happened to Rome without the Popes? Macchiavelli's saying, that the Popes, in the midst of Italy, act upon her like a pebble placed between the lips of a wound, and prevent her divisions from closing and healing, is at least partly true; and it is not an improbable opinion that, if the Popes had been removed, Rome would have become the metropolis of some new kingdom, perhaps the seat of some one of the sons of Charlemagne; so great and venerable was still the sound of her name amongst men.

Lastly, we may ask, which was the greater, the profit which Rome conferred upon the Pontiffs, or that which they bestowed upon her? Be the foundation and exaltation of St. Peter's chair indeed superhuman; yet God directs to His ends the influence of worldly things, and of the circumstances in which His miracles are wrought. And we must wilfully close our eyes if we do not confess, that the grandeur and power of the Rome of the Cæsars did marvellously pave the way for the spiritual magnitude of her Bishop, and augmented the splendour and venerableness of his position amongst mankind. So true is this remark, that when the Imperial residence was transported to Byzantium, the Bishop of that metropolis instantly disputed the power and primacy with the Roman Popes. Certainly, the Catholic world has, heretofore, brought a great deal of money to Rome; we do not mean to deny that. But was it brought there to the Pontiffs, or to the Roman people? Was it for purposes of devotion, or for some other object? If it was brought to the Pontiffs, and for devotion, then look to God and to the Popes for its reward. At any rate, the Catholic world thus paid but a small recompense for the gifts of civilization which ancient Rome had bestowed.

Besides all this, let us notice in passing the singular levity with which our clerical antagonists take up Rome as synonymous with the whole Roman State, and play the changes between a single city

and several different provinces. These latter, in any case, are indebted for no temporal advantages to the Pontiffs, as the history of their municipalities attests and amply proves.

Thus true, thus complete and precise, is therefore our demonstration, that the case of armed intervention in the internal affairs of the old *Æmilia* and of old *Latium* forms no just exception to the principle of non-intervention, and that this violent intrusion of some of the Catholic Powers is an act which outrages international law ; that it is useless, in one respect, that it is disastrous in many others, and that it finds no vindication or excuse even in the pretensions of canonical jurisdiction.

In three entire chapters, we have now sought and examined what exceptions are to be sustained to the sound general principle of non-intervention. Having therein imagined sundry cases of widely different complexion, and having investigated all the most plausible suppositions, we return to an ample confirmation of the same conclusion at which we had before arrived ; namely, that this principle is so thoroughly based on truth, and so absolute in its essential character, that it is not properly and legitimately subject to any exception whatever. For the right which we have noticed, of being allowed even by force of arms to prevent the wrongful intervention of another, confirms, instead of abating, renders more valid and in every way supports this

principle. It must be well understood that none of the occasions of a just war could be included in the list of good and rational motives of intervention ; for just war can never be made on account of the use by a people of its internal liberties, but must arise from some deep injury it has inflicted on the rights of others. Every human action, however shut up within itself it may be, however circumscribed in its mode and in its manifestation, is yet exemplary and influential ; that is to say, that it exhibits, with a good or a sinister effect, its orderly or disorderly character, and its approach to or its variance from the types of truth, righteousness, and grace. By this means alone does it silently and invisibly work upon the heart and the understanding of other men ; and this influence, or moral and spiritual efficacy, is what no one can or ought to interdict, because it is inherent in every possible exercise of our faculties, and if it could be taken away, the very root of all human liberty of action would be gone. This principle marks out and determines at once the inward and outward self-rule of the peoples, and the equitable relations and limits between one and another. If it were not so, the natural liberty with respect to each other, in which the nations dwell, would prove to be much less than that which every citizen of a well-governed republic enjoys at home. But such a paradox cannot subsist in the growing light of the Idea of Law, and the rational rule of justice is now

becoming, *pace* the formidable European Pentarchy, stronger by degrees than all the Holy Alliances or Congresses of Vienna could ever be. This authority of equitable Reason is like a full-armed Minerva, who breaks forth out of the head of Jove, and strikes with his lightning the Titans, oppressors of the world.

CHAPTER XV.

IDEAL OR ARCHETYPE OF INTERNATIONAL LAW.

Looking back now upon the matters hitherto discussed, and reviewing the whole scope of our treatise, it will be seen to be informed and animated by one idea, by one spirit, which is that of human liberty and spontaneity of action. So far as right principles of law are concerned, the high function of the political authority, in every particular State, is limited to rendering the greatest liberty of each, and that of all, compatible and simultaneous ; in order that the essential activity of our being may develop, improve, and perfect itself by its own inherent power of movement, and according to the growth and spread, within us, of the light and the efficacy of morality and knowledge. In like manner must the common life of the nations, and hence the whole mass of juridical relations between them, be developed subject to this supreme law of liberty and spontaneity. In the first instance, social bodies must be voluntarily formed, and distinguished, each apart from the others : next, they are to attain, each the consummation of its intrinsic union, constituting by that unity the "own country," and extending

this, in most cases, to the large dimensions of a nation; whether such nations be shaped out by natural affinity, or by the firm intention of the races which inhabit a certain territory to dwell together and prosper together in that way. So likewise should these social bodies of men thus congregated and drawn into so many several unions, whether by nature or by civil fraternity, whilst continuing one separate from the other, abide in a mutual liberty, equality, and friendship between themselves; each of them profoundly respecting both the inward and outward self-rule of its neighbour, and never pretending to alter one another, however they may multiply the interchange of commodities and good offices between them, or whatever desire they may feel to behave towards each other with kindness and cordiality as members approximately of one great family. It is no wonder that, writing now as we do two centuries and a half after the time of Grotius, we should, whilst keeping in view the two principles of liberty and authority, lay much more stress on the former than on the latter; that we should strive more diligently to explore and to describe the arguments on the side of the peoples, than those on the princes' side; and that we should exalt the right of nations far above any other title of possession or sovereignty. This difference arises simply from the condition of our own times, which are intolerant of any absolute power, and conscious of the moral and social dignity of man, and which abhor

every relic and vestige of feudalism ; nor will they consent anyhow to submit to the old laws of war and conquest. And this condition, in its turn, arises from the new stage which the idea of law is approaching, in our own day, at which law appears to be an impossibility unless every species of liberty for all ranks and classes of citizens be reconciled and duly apportioned together.

Above all things, the brotherhood of nations is desirable ; it is a fair and generous task to root out from the hearts of different races of mankind their old antipathies, and to teach them a growing esteem for each other ; it is a holy purpose to promote their concord, as far as possible, to multiply their opportunities of addressing and conversing with each other, to facilitate their commerce, to join their efforts in common and magnanimous undertakings. But it is also desirable, nay, it is quite necessary to look to the perfect preservation of their reciprocal liberty and independence ; and see to it that no international acts and offices ever depart from their proper character of being free and spontaneous, as well as capable of being altered or revoked.

Some persons are of opinion, that as there is a daily increase of mutual relations and ties between the nations, the occasions of intervention in each other's internal affairs must equally increase ; whereas it would be our endeavour to reduce them, with all our might, and even to abolish them alto-

gether. But this consideration vanishes when we correct the ambiguity of these words. It may be admitted, that henceforward, there must be a greater frequency of pacific and friendly interventions or mediations, and of decisions and arbitrations benevolently proffered or voluntarily asked. But we affirm that armed interventions, on the other hand, must become more rare insomuch as the respect felt for the dignity and independence of States is augmented, and the rational rule of law becomes clearly and consistently present to our intelligence.

For this very cause, we are in no great haste to promise the institution for the European nations of a Supreme Tribunal, or of anything resembling that scheme, which is usually attributed to Henri IV., and which has more than once reappeared, having been diversely renewed by St. Pierre, by Rousseau, by Kant, and by Bentham. Their lofty and noble minds entertained the error of believing, that the civilization of Europe would be greatly advanced by that which, in our opinion, would, on the contrary, tend morally to deteriorate it. Certainly, if it be a fact that, in the societies of private men, coercive laws and inexorable tribunals are required, everybody feels that is not a thing to boast of, and that it is no sign of the goodness of human nature. Instead of this, it would be an excellent thing if every citizen remained in his natural liberty, and, as equal in rank to the magistrates and the judges, were not

subject to any compulsion of the police. Now the nations are in just this liberty and natural parity with each other, and they would lose much of their dignity and grandeur by leaving this condition. It is not enough to reply, that the Tribunal, to which the writers we refer to propose that States should be subject, would itself result from voluntary election by them. For cases have not unfrequently occurred in history, in which the judges were elected by the whole people, yet were judges, nevertheless, and had their decrees accompanied by force ; and if there were no force to accompany its decrees, of what use would this institution be ? This proposition really involves a sort of contradiction in terms. Great must be the modesty, the docility, the morality, and discipline of the great Potentates, to induce them wholly to submit to the decision of certain judges ; and marvellous, on the other hand, must be the unitedness, courage, and perseverance of the aggregate body of nations, to furnish their common Tribunal with sufficient force to repress, if need be, any recalcitrant wills. But if the spirit of the European States be such as this, then the sentiment of rectitude alone, and pacific mediations alone, will almost always suffice to recompose provoked minds, to avoid wars, and to re-arrange affairs : they will suffice quite well, in the worst of cases, with the aid of general leaguings together, in order to rebuke the audacity and perfidy of treaty-breakers and insulters of

justice. Nothing, then, is finer or more glorious for mankind, than that each nation should remain the judge of itself, and the free legislator of all its own acts and enterprises. Let the States of Europe still grow continually in their mutual friendship, so as to put on the similitude of a family group. For all that, their intercourse should not be governed by any other law than that of pure spontaneity. The general meetings held by the envoys and spokesmen of different peoples—however majestic, important, and frequent they may be, however sincerely and equally their representative capacity and the validity of their suffrages may be attested, whatever opportuneness, wisdom, and good counsel they may display, in fine, whatever strict compacts and obligations they may contract—should never exceed by one hair's breadth their due office of conciliation and persuasion. We may say, in conclusion of this, that the entire code of international laws never ought to signify any other thing than this; namely, the free will of the peoples freely pledged to comply with certain regulations of universal morality and justice, or with certain convenient special determinations, which they have together deliberated upon, and considered. Any step beyond this, any ever so slight deviation from this limit, would be throwing civilization back, whilst appearing to advance it.

Liberty and authority, however, are what in scholastic language are called antithetical terms, and

where one of them is introduced, the other must inevitably have preceded or must follow it. Let us then see what part is to be allotted to authority, in international law; and if authority, in some of its forms, appears much changed at the present day, compared with what it was in the time of Grotius, in its essence it does not change; because it never can be anything else than the eternal authority of reason and justice.

It is almost a trivial saying, that Europe lives and reposes beneath a common *jus* and a common legislation, for the preservation of which all nations are, mutually with the same faculty, its guardians and its vindicators. If this be indeed an accomplished fact, authority is great in Europe, and perfect, and the progress of our civilization is marvellous.

But really, in what can this positive law of Europe consist, with this aggregate of provisions whereby it is made concrete and specific, except it be in the purest and most provident dictates of righteousness and of justice? Of these laws, far more truly than it was said of the Roman, it may be said, that they are *reason written*, for indeed it was only reason, and a profound moral sense, that could have thus prevailed, in the course of ages, over wills and interests which are diverse and contrary, as well as free and exempt from compulsion. It was only by the evident rationality of that which is juridically good, that there could have been sug-

gested, continued, and communicated among so many peoples of such various conditions, that body of international agreements and customs, on the model of which treaties and conventions have since been compiled. And if all the nations do act in turn as custodians and vindicators of this common legislation of theirs, that is much better than any kind of an Areopagus; for it renders any infraction of the law almost impossible, since whoever dares attempt it must confront allied Europe in arms.

Unfortunately, we fail as yet to possess in its entirety such a legislation, or protectors of it who would be ready and united, as well as impartial and incorruptible.

European law is composed of two different parts; the one being substantial and perennial, the other accidental and mutable. The former determines, almost as it were in the abstract, the equitable relations between people and people. The latter is the result of the territorial and political conditions of the States, as they have been fashioned by fortune, by wars, and by revolutions; and such as diplomacy accepts and recognises them, in that aggregate mass of treaties and of official assents, which diplomacy at present holds to be extant and valid. Now in the former department of the law of nations, much progress has undoubtedly been effected; and the best fruits both of science and of practical experience are willingly adopted into it. The facts of our day

do indeed follow its march with a halting and unsteady pace; the pride and selfishness of people do often manage to elude its principles, by cavilling about their applications. But, in the long run of time and space, facts cannot for ever withstand the force of ideas.

The amount of progress actually effected, as we have before intimated, is easier to be remarked with regard to the inferior principles, than to the cardinal and supreme principles of law. For we find that where the question is such an one as, for instance, the definition of the nature and limits of sovereignty, or almost any other of those grave juridical theses debated in this book, these authors have not abided firmly by the same opinion, nor have they escaped being led into metaphysical abstruseness. Besides this, the very constitution of monarchy being involved in such questions, and the rights of the people, with other such "invidious truths," as Dante would call them, being thereby brought under discussion, some publicists have been disinclined to open their minds upon them; whilst others have preferred to flatter the potentates whom they courted for interest or ambition. And in addition to such obstacles, the clearness and the progress of this first-mentioned department of law have been greatly impaired by its being mixed up in many points with that other, which we have styled the accidental and mutable portion of law. There is no

doubt but that the fact of a certain larger or lesser extent of territory, of a certain delineation of confines, of a certain tributary subjection of one people to another, or the fact of this or that particular country being declared neutral, or of a crown being wont to be transmitted by this or that particular mode of inheritance, or of the straits at the entrance of a particular sea being forbidden to ships of war—that such facts as these involve, in the present state of things, not much that is rational and obligatory *per se*; but that on the contrary, they may sometimes prove to be of such a kind as to come into direct conflict with the essential and absolute principles of right. We may therefore very properly say, that the territorial and political circumstances of Europe constitute the mutable, the corporeal, and accidental part of law. Nevertheless, since this part is implied in, and sanctioned by the existing conventions, treaties, official adhesions and recognitions, or rather since it mainly makes up the subject of them, it appears to exact the same degree of fidelity and observance to which we are bound with regard to the principles of law; and on this account (from confounding the two different portions of law together) generous minds are not unfrequently induced to revolt indignantly against law itself.

In order, then, that, along with liberty, the authority of the law of nations may grow and be strengthened, it is most needful, in the first place,

that its rational bases should be widened and completed, by the researches and the verdicts of speculative philosophy, which ought to be free and generous, as well as profound and irrepugnable. This knowledge, simple, orderly, and perspicuous, should be deposited in what we have called popular science, without which the labours of the erudite bear no fruit. It is needful, in the second place, that the territorial distribution, and the civil and political circumstances of all Europe, should depart as slightly as possible from the strict requirements of principle and from purity of doctrine, so that their accidental and fortuitous existence may, so to speak, assume a substantially rational character, and so that every vexatious contradiction in the body of positive law may be removed.

After this, it is needful that everywhere, with the utmost variety of governmental forms, a certain uniformity of their essence should be gradually insinuated into them; namely, that liberty should everywhere introduce the people to a discreet and sincere participation in public life; that in no part, and in no order of citizens, there should be absolute power; that nowhere should the expression of thoughts and minds be violently interdicted; that no province of a State should be kept in an inferiority of rights, or inequality as to the legislation of the State.

From these conditions, forming the common essence

of the governments, the relations and transactions between one people and another will proceed loyally, expeditiously, abundantly, and easily ; and diplomacy will altogether cease to be the organ of the monarchs alone, or of the courtiers alone, and will become the genuine and immediate expression of the thoughts and wills of the nations. Hence will arise the sincerity of the congresses, the intrinsic justice of the conventions, their durability and inviolability. Hence, also, it will arise, that personal leagues between the princes, to borrow for some one of them the mighty aid of armed forces against his own subjects, will never again be contracted ; nor will the age have to behold that monstrous situation of governments whose incapacity and wickedness are propped up and defended by troops of foreign mercenaries.

For the observance, also, of the rational principles of law which we have explored and explained, it would be requisite that the congregating of people together for a common public life—in other words, that the very composition of the State should cease to be subject to the whims of chance, the decisions of conquest, or any other caprice or application of forces not their own ; but that it should, so far as might be feasible, be disposed and determined by human spontaneity of action, and by the profound and living instinct of nationality. It would thereby come to pass, ere long, that certain conjunctions of

peoples, which are unnatural or insufficient for them, would dissolve themselves, and that certain others would close together and be consummated, so as not again to segregate or divide. By this rule, the States which have no *raison d'être*, but which are borrowing a factitious and violent existence, would disappear. To descend to particulars, it may be useful to remark that, of such States, the principal are three, in our opinion—Turkey, the Austrian Empire, and the Roman Provinces. In Turkey, and in the Empire of the Hapsburgs, there are several hostile peoples, with several native countries; wherefore, by our principles, they are lacking in the unity and fundamental moral homogeneity of the State. In the Roman Provinces this unity is forcibly and without remedy prevented by the theocracy there. In some States, although wanting a perfect homogeneity of their elements, which are in a measure rough and unformed, a certain assimilating virtue is nevertheless displayed, which does, by degrees, transfuse and melt them together. Such a State may, by this means, escape internal dismemberments, and reconcile its own greatness with the inexorable decrees of international justice. And in this category, Russia is especially to be noted. There are also some little political congregations, which, although they may be able to preserve themselves under the safeguard of treaties, and under the respect in which the dignity and inviolability of all

autonomies, whatever they be or appear to be, should be held, are certainly, nevertheless, by their narrowness and by their impotence, kept excluded from the rapid and glorious movement of progress by which the larger human families ascend to that civil perfection which is the bounden and ceaseless goal of all our kind. The best prudence, therefore, of such small bodies will be for them spontaneously to dissolve themselves in other great ones with whom they have an affinity, if they can possibly do so.

In like manner ought all dependence of States, under whatsoever title or colour, to disappear, vassalages, tributes, high protectorates, and half-sovereignities. In our judgment, the best condition of Europe requires that, in its vast family or universal commonwealth, as we may choose to call it, there should be reckoned only perfect individuals; that is to say, complete and in every way independent States. Not even maritime colonies are to be excepted, since their dependence is by its nature temporary, and their destiny is to grow and wax great by the virtue and vigorous pride of their own resources, like a sapling, which at first vegetates by the roots and nourishing juices of the maternal plant; then, having grown up and put on its foliage no less than hers, leads apart its separate life.

We have seen how the ultimate growth of States, and the final development of the spontaneity of a race, are shown by expanding the bounds of its own

country to the bounds of the nation, resolving all its parts into one another, and of several autonomies composing a single and powerful one. No force ought ever to hinder this, which in process of time will surely take place among the Italians, and by and by among the Greeks; it will also be some day realized among certain Slavonic peoples, perhaps, too, among the three Scandinavian families, Danish, Swede, and Norwegian, and among the diverse populations inhabiting the great valley of the Theiss.

But we confess that this conjunction of peoples and renovation of States, however opportune it be for advancing the realization of the archetype of law, must prove to be a slow, laborious process, mingled with heavy damages, and stained, perhaps, with much bloodshed. Therefore, to divert it so far as is possible from the ways of violence and sanguinary conflicts, it is above all necessary that the pacific and regular manifestation of opinions and feelings should never, on any occasion or in any place, be forbidden or made extremely difficult to any class of citizens; and that an accurate and ordinary standard of this should arise among the peoples, by which it may be rendered impossible for anybody to deceive the general judgment in estimating, whether true or false, these significations or demonstrations of the public wish.

From the absolute liberty and independence of

every State, are evidently also derived their strict parity of rights, of their representations and suffrages; the entire and unsparing abolition of armed interventions, as well as of the barbarous principle of conquest; the prohibition to monarchs of wearing several crowns, and unequally governing several peoples at the same time; and the prohibition to the Church of ascribing to herself any prerogatives beyond those enjoyed within the liberal scope of private liberties and franchises.

With such amendments and innovations as these, the settlement of Europe, approximating to an exemplary character and to the model of law, will lose a great deal of that irrational, fortuitous, and oppressive shape which it now bears. Hence will those provisions of the positive code of nations, which have reference to that shape and settlement, acquire an authority they do not now possess; and then it may be said of them, indeed, that they are written not merely in the chanceries of a kingdom or a ministry, but in the consciences of all good citizens. And then, too, it may indeed be said, without a legal fiction, that Europe does live beneath the moral sway of a common law or system of rights, and of a legislation common, just, and venerable.

But since this is boldly affirmed by many of the diplomatists to exist actually at the present day, alleging the text of numerous treaties, along with

a bundle of official assents and recognitions, as constituting these, we are led by our theme to say a few words about the authority of treaties and the fidelity which is due to them, continuing to investigate and describe the perfect type of international law under another aspect.

CHAPTER XVI.

FAITH OF TREATIES, AND THEIR PERFECTION.

WITHOUT doubt, the bulk of positive European law is at this day consigned to the text of treaties. I believe there are but few ancient customs universally accepted between the nations with regard either to general or particular matters, which do not appear inscribed and ratified in some public convention of our own times. Generally speaking, therefore, the faith we maintain towards treaties ought to be perfect and unalterable, because it is understood that we maintain it towards justice and equity; and it has well been called a *sacred* faith, to show by that adjective that the bond with which a solemn compact obliges the nations is one of the strongest, and of a religious nature. It is plain, too, that the weak and unfortunate should cherish most dearly this religion of treaties, for sometimes they find no other refuge, no better defence against the immoderate and unruly might of others, than a written parchment and the faith which is kept towards it.

Nothing, then, do we more earnestly desire than to establish, and to perpetuate, the worship and scrupulous observance of public conventions; seeing

that the more their authority reigns, the more can the dominion of law be said to be augmented, which is the main principle and base of all civilization, and of all prosperity and happiness for mankind.

But it is not, on the other hand, to be expected that this age should fall into such a superstition as that the letter of treaties should permanently tie and constrain it whenever their spirit is different from justice, as we remarked in the beginning of this book. With a view therefore to arrive at the complete veneration and preservation of them, and in order that the peoples may be as jealous for them as the Governments, three conditions are requisite. The first is one which every reader may anticipate ; I mean, the intrinsic goodness of the compacts and conventions, and their conformity with the dictates of rightcousness and equity. The second is, that they emanate never from the will of a single man, but from the nations contracting through their genuine and direct representatives. The third and last is, that Europe should display more concord and courage than it now does in forbidding their infraction, when this infraction commits an enormous injury and manifestly overrides the most precious and essential rights.

It ought, beyond doubt, to be received as a good precept of justice, that the treaties and conventions between the peoples survive any catastrophes of their internal Governments, and that one Government

inherits from another the obligation of maintaining these compacts inviolate. Nevertheless, we must here distinguish what in them is intrinsically binding upon all, from that which obliges individual creeds and opinions. Those treaties, indeed—the subject-matter of which involves, be it much or little, the concerns of religious liberty, are of necessity deficient in the character of a common obligation; and of this kind are chiefly the Concordats, or rather, that portion of them which does not regard the outward police regulation of worship alone, but which goes into the particulars of the faith, and prescribes acts that by their very nature depend upon the special and spontaneous judgment or sentiment of individual men. Of this kind are the conventions respecting the celebration of matrimony, or the bringing up of children in this or in that creed.

Nor, in like manner, can these other agreements continue inviolate, which are essentially injurious to the civil power and sovereignty, this being unalterable and inalienable by nature; and such as these is every compact which ascribes to the clergy extensive jurisdictions, or concedes to them any immunities and exemptions contrary to the common law, as we have explained in the fourteenth chapter.

The arrangement, or, as we might rather call it, the strange new-fashioning of Europe, which resulted from the Congresses of Paris and Vienna, was entirely set forth in the general and particular

treaties to which the Governments, either contented with it or resigned to it, gradually adhered. But what of that? The date of those treaties was not much above forty years ago, and already the infractions of them which have been attempted or consummated are numerous, and each of great importance. Hence the authority of law, and the faith of treaties, have sustained by their recoil a disastrous shock ; or rather, a certain general contempt and an aversion for the whole of the diplomatic work of 1815 have got infused into the minds of the multitude. Now, if we look around to see whence those assaults and offences have proceeded, we must instantly perceive that they have all come either from the unpunished arrogance of the stronger, or from the just indignation of the peoples. Russia, for instance, chastised the Poles for their insurrection, depriving them completely and for ever of their constitutional compact, and therewith, of all their liberties and their guarantees, which were amongst the things stipulated for at the Congress of Vienna, and promised, in a formal manner, as a consolation and compensation for Poland's remaining divided and broken in pieces ; Russia having taken away the best part of her. Europe beheld in silence this culpable deed, or in worse than silence, affecting every year, by the mouthpiece of the French Parliament, to intend a serious interposition by protests and menaces ; but as they never produced any effect,

such expressions appeared unworthy of a great and powerful people. Europe likewise remained silent, when Austria exterminated the small, unarmed Republic of Cracow. By the treaty of Vienna, Austria had been appointed guardian of that Republic, along with Russia and Prussia; and these three, accusing their pupil of various faults, instead of correcting, killed him. Not long afterwards, this same Austria, which aimed at everywhere securing, under legal forms, the servitude of the Italian provinces, dictated to their princes some treaties by which, under colour of reciprocal defence, all their States were subjected to occupation by the Imperial armies; and the Powers which, at Vienna, had decreed the independent sovereignty of those wretched princes, beheld this manifest usurpation in silence.

The other infractions were effected, we will not deny, by the anger of the peoples offended by those treaties in some of their essential and inviolable rights. The Congress of Vienna enjoined the French not to recal the Napoleonides again to the throne; which is an unjust prescription, because it is restricting the inward autonomy of a people, humbling its legitimate pride, and inflicting upon it an injury on account of another's crimes. One day, however, the French, in spite of this haughty prohibition, lifted upon their shields the first Napoleon's nephew, and the greatest potentates of Europe rivalled each other

in proffering to him their acknowledgments and respects. In 1830, the Belgians, splitting asunder the union with Holland which had been imposed upon them, recovered their liberty and national existence; and thus they taught the Vienna publicists, that a treaty clause which conflicts with that principle of spontaneity we have laid down, and breaks up the fundamental moral unity of States, and this without consulting the suffrage of the people, is an essentially illicit one. The Swiss, too, assembled at Zurich, acceded, partly of their own will and partly by force, to the Federal compact which the Congress of Vienna had compiled and proposed for them. But since no nation is allowed to break off the course of its own perfectibility, and to hold itself aloof, by its own choice and free-will, from that ultimate degree of civil union towards which States aspire, and in which the best and soundest unity of the common country of its patriotic citizens is to be found, therefore that purpose of the Swiss was, by its very nature, temporary and mutable; and so Helvetia, feeling herself disposed and mature for a more supremely perfect Federal compact, soon broke her way out of the tight swaddling-clothes in which the Holy Alliance would have confined her, condemning her to perpetual childhood. In like manner, the Canton of Neuchâtel has called to mind that maxim of social equity which refuses to allow the union of two distinct diadems upon one head, since the in-

ward autonomy of either of the two States ought not to be put in continual dread of being over-ridden and annulled by him who can bring the forces of the one to crush the other. Hence Neuchâtel, with good reason, claimed its total independence, and refused to remain in subjection to the House of Brandenburg.

And lastly, Italy, feeling herself as of yore plucked asunder and divided, and seeing how the spoils of her were parted amongst her enemies, with no reference to the wish of her peoples, and with no respect for the marvellous greatness of her past, Italy, having been kept in ignorance of those treaties which concerned herself, and expressly excluded from the discussion and compilation of them, could regard them with no affection or reverence, and turned against them under the hard necessity of snatching at every occasion to thwart them and tear them up. So has Italy now dealt the last blow, and perhaps the most mortal one, to the conventions of Vienna.

We shall not fail also to observe that the Germanic Confederation, another abortive offspring of Vienna, has already suffered more than one shock, being found by the Germans insufficient for war, oppressive in peace, and favourable only to perpetuating and defending the absolute rule of the princes. It may hence be deemed quite certain that Germany, sooner or later, by changing her Federal compact conformably to the principles of liberty and

justice, will remove another page of the present international code.

In this manner, we repeat, by the overbearing might of the giants of the political world, on the one hand, and by the impatience of the injured peoples, on the other, has been mutilated and disfigured that fabric of the Congress of Vienna, which has now come to be like that torse of a statue, in one of the streets of Rome, good for nothing but to stick pasquinades upon. This might afford a great rhetorical instance to one declaiming on behalf of the universal commonwealth of mankind, who should urge that it is needful above all for agreements and conventions to be substantially founded in justice, and to have for their authors the organs and faithful representatives of the peoples ; and lastly, that being accommodated to the rational rule of law, they should also find in the magnanimity of the nations a prompt and spirited defence, because the impunity of one usurpation facilitates a hundred worse.

It is therefore requisite that the doctrine of treaties should be reviewed over again by the publicists, who should give us the pith of it, instead of the bark of its externals, which latter has undergone planing and polishing enough from the secretariats of courts and cabinets. Diplomats are not unacquainted with the slightest of those formalities and etiquettes, which precede, accompany, or follow the acts they have to perform. But perhaps they are

not sufficiently enlightened on the theory of liberty, which is identical with that of the most perfect inward and outward self-rule of the peoples. Of that theory, we have briefly but accurately described the chief features; and anybody who would compare with it the history of the principal conventions made in ancient or modern times, might soon perceive what has been defective in them, and what has been excessive; whilst he might at the same time figure to his mind the complete idea of what, in future, treaties and agreements ought to be.

An infallible sign of the progress of a science is that, in its approach towards completeness, the number of its sovereign postulates be reduced, and that its elementary substance be cleared and simplified. With regard to our present subject, this result will be shown, proving an earnest of that more extensive and methodical treatment of it, which we cannot conveniently attempt here.

If we take in at one glance the whole mass of diplomatic negotiations, and then minutely distinguish them by their kinds, we may affirm with precision that they divide themselves, in the first place, according to their external characteristics; and in the second place, according to the subject-matters with which they deal.


Into the first class of comparisons treaties and conventions are admitted, on account of their being either general or particular, conditional or absolute,

necessary or voluntary, temporary or perpetual, personal or otherwise, public or secret. Other minor and accidental differences may be passed over, as, for instance, whether the treaties be those of principle or of application, complementary or declaratory, and so on.

We have already spoken our mind about the rules by which general treaties and general congresses should be directed. Of these latter, Vattel and other jurists appear to have had little or no conception, as though they had been quite beyond possibility. We, on the contrary, desire and hope that they may in future be feasible and not unfrequent; and it is only by them that we shall obtain a full and durable authority for those treaties which will truly merit the appellation of *general*, as well by the number of the contracting parties, as also by the nature of their subject-matter; and by means of which the ordering and settlement of Europe will be made acceptable to all, and so obligatory upon all.

With regard to conventions being conditional or absolute, namely, as to whether they be determinate in themselves, or dependent for their execution upon something else, we wish all of them to be moreover dependent on the suffrage of each respective nation, to be sincerely and in an adequate manner ascertained from the mouths, and by the counsels of its official ministers, and, at the same time, of its deputies.

We call those treaties necessary, which emanate immediately from the perennial authority of international justice. These, indeed, do not, properly speaking, require any written text; they might be taken for granted. But we may observe that, in every voluntary treaty, the special and particular stipulations are always involved in the justice and reasonableness of those general principles, of which they ought to prove a peculiar determination and application. And in no case, so much as in political negotiations, should Kant's moral precept be fulfilled, "Act so, that thy determination may serve for an universal rule." Thus, likewise, should every treaty be an exemplary one, which may be recorded and alleged as an authority. Yet the contracting parties, as they are human, may possibly run into grave error, both as to the profit which they mutually seek to obtain by their agreements, and in their notions even of international right and justice. Errors regarding its profitableness certainly do not, by themselves, invalidate a regular convention; but errors regarding its righteousness, when they are essential, and have been clearly recognised, do of necessity make any sort of contract infirm. Wherefore it is that we can never be weary of insisting upon these three things: that the principles of international law should be most studiously pondered and rectified; that an acquaintance with them should early become part of the




precious patrimony of our popular knowledge ; and that Europe should cease to entertain, as at present, dissentient opinions about some of these principles, or, from self-interest and ambition, to combat so fiercely against them.

It is, however, thought desirable that, in those treaties which are contracted for the sake of escaping some impending ruin, the ordinary considerations of equity should not be pretended, but such treaties, although enormously hurtful, may hold good in law, because they prevent the utter extermination of a nation. For us it is enough to remark, that these are not treaties, but immoderate prescriptions on the part of the stronger party, who harshly profits by the other's misery and despair. By all means, as we shall see farther on, such cases must be excluded from civilized and Christian Europe, for in such an Europe they should be deemed impossible.

With regard to the difference, that conventions are sometimes declared to be transitory and sometimes perpetual, we shall confine ourselves to remarking that, if we consider the uncertain and fluxible nature of human affairs, it is much safer and more prudent to make all conventions temporary, at least in this sense, that they may at certain stated intervals be revised and renewed. Nevertheless, there are many treaties which by their own nature aspire, and with good reason, to immobility, and to be perpetuated ; and such are

those which constitute the very existence of a State, its frontiers, its official and public recognition by other States. Of these we have to say, that we do not see any legitimate and practicable mode conducive to the perpetuity of human agreements, except that of founding them wholly upon justice, and upon the facts disposed and pre-ordained by nature.

The three last-enumerated divisions, as to the different kinds of treaties, namely, as to whether they be equal or unequal, personal or otherwise, manifest or secret, are by our principles altogether removed; and science never can, nor ought to take cognizance of them. Personal treaties ought not to exist in the sense of their not being negotiated and settled with the State, but with the sole person of the monarch. Even in conventions for the royal nuptials, and for other arrangements in the reigning family, the State ought to have a share, and to regard them as its own deed. Unequal conventions, likewise, that is to say, which are so contrived that the profit and advantage are all on one side, or preponderate excessively on one side, are not to be acknowledged by the law. But if powerful and magnanimous nations shall lend their succour to the weaker with little other recompense than the increase of their authority and glory, the treaty which shall stipulate for that generous aid will certainly not appear an unequal one before the




law, or in the opinion of men ; since it is always allowable for high-minded virtue thus to equalize the interests of the parties ; and their vast disproportion in the profit they have respectively gained is removed, in view of the supreme complacency of achieving such good, and of the immortal praise thus earned. Lastly, though secret treaties be in the art of politics still reputed necessary, the law can ill approve of them ; for if they do no harm to anybody, or hurt him but justly, if neither of the parties be injured, and if no clause of the convention need shun the severe and scrutinizing public eye, why should they resort to silence and concealment ? In truth, it is seldom found but that the secret clauses introduced into conventions, and afterwards coming to the general knowledge, do convey some intention neither very honest nor very benignant with regard to peoples or to governments. In the treaty of Paris which preceded that of Vienna, the secret articles arranged that the four friendly Powers alone, namely, Russia, Prussia, Austria, and England, should dispose of the vast territories lost by France, and that the European equilibrium should be settled according to what might be agreed upon beforehand between them. After that, the general Conferences at Vienna assumed rather the air of a comedy than anything else. At any rate, if silence and concealment may do for transitory and occasional stipulations, they

do not well suit those which have a permanent character, or which implicate any rights or interests of a third party. But we may leave it to the effect of time to make this working in the dark more difficult daily. We think it will not be long before the last hiding-places of politics and diplomacy will be detected and laid open, and both of these will be obliged to dwell in crystal palaces, where their every act and motion, being visible to all the world, will by that only become fitter and more correct.

With reference to their subject-matter, also, treaties may be divided into several species. Some of them conclude truces and peaces; others provide guarantees; there are certain which stipulate for neutrality, or for leagues and friendships; while certain others regard commerce, navigation, and the interests of good neighbourhood. There are treaties of protection, and treaties of intervention. Lastly, there are the conventions with Rome which receive the peculiar name of Concordats.

In our view, the three last classes are to be abolished, the two first of them instantly, and the third by degrees. We declared above, that armed interventions in the internal concerns of a people are always violent and unjust. The law cannot therefore admit this category of treaties. Nor can we speak much otherwise of the treaties of protection, whenever the protected are thereby deprived of a great deal of



their independence. Before the law, the permanence of such treaties is illegitimate ; and it would at least be fitting, that the peoples in this manner protected should, at certain intervals of time, be interrogated, and this mode of protection be approved and accepted anew, whence even that very foreign interposition itself might thus be turned to a periodical act and exercise of the liberty and independence of those peoples.

It is obvious that our discourse does not allude to that kind of disinterested protection, which all the Powers of Europe agree in common to maintain over some countries, not strong enough in population or arms to suffice, in every emergency, for their own defence. This sort of protection reduces itself to a species of guaranty which the strong should always feel bound to apply, for the salvation of the weak, even if they were not obliged by the text of any treaty to do so. But whenever the patronage thus bestowed should transcend these limits, as it is much to be doubted that it may, the voice of law could not be mute or affect any approval. It is a hundred times better for a State not to exist, than for it to be dependent, with the title of a protected State.

As for the Concordats, we repeat that they should gradually be simplified, reduced, and at length become quite superfluous, when the State and the Church shall arrive at that fortunate period at which

they may live good friends and of united mind, but each free and independent in its own functions and authority.

But the most important and critical, as well as the most difficult to make and keep within the limits of equity, are certainly the treaties of peace. In truth, if we look at the general condition of Europe, and that of its largest countries, as deliberated upon and decreed in the Congress of Vienna, what else was it substantially but a continuous treaty of peace between the victors and the vanquished of Leipsic and Waterloo? And because the former chose to make more profit out of their victory than was due, and thought to take security for the future by means which were immoderate and did not conform to the imprescriptible rights of the nations, that peace, in many of its determinations and consequences, has not held good. This is a vast theme, and cannot be comprised in the few pages left of this chapter. We would, however, indicate the rules directly issuing from the principles laid down in this book, as contributing somewhat towards the ideal type of European law.

There are three principles to be observed. The first is, that, by a treaty of peace equitably stipulated, every notion of punishment, reprisals, and humiliation, is done away with. In civilized Europe it should be assumed that, when wars break out, both the belligerent parties are sufficiently persuaded

that the reason and the right are theirs. A war commenced with dishonesty and evident iniquity would tend to the great disgrace and manifest impeachment of all Europe, which it would behove by all means to have prevented it; or which if the efforts at adjustment and conciliation failed, should, by casting itself wholly on the side which had reason and a clear right for it, have made a fresh war impossible. Victory, however, should be considered as a fortunate event, and as nothing more; so that everything in the stipulation ought to be treated with equality and mutual honour.

The second principle is, that the fact of the victory cannot be maintained and perpetuated so far as it may involve an infraction or a diminution of any original or fundamental rights of the peoples; and it is only with this limitation that the maxim of *uti possidetis* taught by the Roman law can be accepted. By this rule is disallowed any power of permanently occupying the provinces and the fortresses won by the sword, since it is not lawful to annihilate the autonomy of any State or province. Nevertheless, if the territory thus won did not belong to the defeated enemies except by a former usurpation, or even by treaties which were not valid in the sight of the supreme law, that territory ought not to be restored to them, but replaced in its primitive liberty. To cite one instance of this; Lombardy was fairly taken away from Austria in the late war, and Venice would

have been fairly taken from her. But on the other hand, if the Allied armies in the Crimea and their fleets in the Baltic, a few years ago, had obtained such victories as to effect the occupation or possession by them of some interior territory of Muscovy, it would have been a great abuse of the fortune of war to have forcibly severed that territory from the natural *patria*, and to have broken for ever the tie of that autonomy in which it held a share.

The third principle is, that all the pledges or guarantees of future security and defence, which are seized or stipulated for, should not only be proportionate, but their holding temporary, whenever they involve any diminution of the independence of the State, or the subtraction of much of its defensive forces, or even any condition simply indecorous in itself and not agreeable to the majesty of a free State.

Such is the ideal pattern of a convention of peace; but it must ever be understood that the perfection, towards which the law aspires, enjoins this, that war should be waged as rarely as possible, and then for causes not only legitimate and necessary, but lofty and generous; for we may not so far exceed the landmarks of human experience as to imagine a perpetual, universal, and unalterable state of peace.

We have described, on the one hand, what just and durable conventions between the peoples ought to be; and on the other hand, what are the causes of their having been so frequently infringed; we have

also designated some points of what the better European law should be. From all these considerations may be evolved an essential notion of the principle of Authority, combined with and duly balanced against the principle of Liberty, as reason and science demand. They are divine principles both, each summoning in the other in its turn, each admirably helping the other. Every step in the perfecting and progress of international law, every instance of a higher justice being introduced into the arrangements of the nations, is answered by a proportionate increase of their liberty and independence; whilst in the same degree are augmented the faith of treaties, the probability of peace and universal friendship amongst men.

In addition to what has here been said, we have only to recal the observations made in the earliest pages of this volume, and we earnestly desire that they may not escape the minds of our readers. We do not, because treaties sometimes reveal but too plainly their injustice, and turn out excessively injurious and burthensome to a people,—we do not therefore mean always to approve of their infraction, and still less of its being precipitously and recklessly done. Even where all the conditions of intrinsic unlawfulness and nullity that we have pointed out appear in certain treaties to be realized, we must remember, notwithstanding this, that if they have obtained a place in the existing European law, they do,

by that alone, assume something of a solemn and venerable character, and shelter themselves under the common good faith of mankind.

It is, however, needful that, before a people resorts to the extreme course of cancelling a treaty by the sword or by revolutions, it should have attained the clearest and most consummate knowledge of its violated right, and it should have promoted the formation of a like judgment upon it among other nations, or at least in those minds, among the citizens of other nations, which belong to the classes best qualified to form a thorough and mature opinion. This people should, moreover, have sought for the interposition of influential mediators ; it should have tried to procure some equitable and pacific accommodation ; it should have been ready and disposed to yield, to every damaged interest, compensations and proportionate repairs ; it should have exhausted every method and every expedient of conciliation and of persuasion. It is, indeed, true, that in most cases, these legal and friendly remonstrances or negotiations are interdicted to the people by that same exorbitant power which has already imposed the odious and grievous treaty upon them ; in which supposition, their excuse for resorting to the violence of war and revolution will be much greater. But whether they do this or not, whether such conventions be infringed or borne with, the injury, and we may say the disgrace, to European civilization, re-

mains the same, that but too large a portion of the existing international agreements, and too many of the provisions of the common law of Europe, although they endure in fact, are under the ban of conscience ; and that which, on the near side of a river or of a ditch, appears to be just and praiseworthy and good, is on its farther side declared to be unjust, abominable, and wicked.

It now remains for us to look at the perfection of the law from another point of view. There are two main objects intended by positive international law : it seeks, by removing obstacles, indirectly to foster the growth of friendship between the peoples ; and it seeks to increase the safeguard and security of the less powerful of them. It is natural for men to exchange their goods with each other, and while they do so, to feel the impulses of a mutual sympathy. But it is requisite that the law should extinguish, or at least should diminish, the causes of aversion and war, and should strengthen amongst all the notion of the dignity of States. And if, as nobody will deny, what law consists in is just this, that reason and righteousness should always prevail over force, cupidity, and ambition, then it behoves that the security of those who are less strong and have less defence should be advanced *pari passu* with the progress of law. But, on the other hand, States cannot be frankly benevolent and friendly, unless each of them be established in its natural, proper, and suit-

able conditions. And the feeble will never be assured of a common safeguard, nor will they really enjoy their parity before the law, unless there grows up in Europe a magnanimous spirit for labouring and striving in defence of the peoples threatened or oppressed, assuming always that the injustice with which they are so treated or so menaced be a serious and evident one. Herein lies the third condition above enumerated, requisite in order to diffuse, and to render more valid amongst mankind, the faith and religion of treaties. To say the truth, it has been hitherto the case, that if the interests of the great and middling Powers be not in any jeopardy, and if, in order to save another's rights, they would have had to put themselves to much inconvenience or even to confront the risk of a war, everybody has shrugged his shoulders and has looked on from the snug shore at the distant storm and the shipwreck of his fellows. Thus are nations, not less than individuals, blinded sometimes by their selfishness ; for they neglect in time to pluck out the roots which overbearing might has planted of future wars and revolutions, in the fierce and dreadful entanglement of which they afterwards, when it is too late, find themselves involved and caught. The fact is, that the idea of international law cannot proceed farther in its development and progress than the corresponding reformatations which have taken place in the civil law. But we mean to say that nations, as well as

individuals, tend by their instinct and duty to pass onward from the negative state of justice into the positive; and that it may not always be sufficient for them not to injure each other, but that they will necessarily attain to the sentiment and the inclination of greatly benefiting each other; in fine, the strict Law of Nations will gradually come to be superseded by the Charity of Nations.

One of the most memorable sentences that issued from the pen of Montesquieu was certainly the following: "The whole Law of Nations may be condensed in this proposition alone, that the peoples ought, in war, to do each other the least harm, and in peace, the greatest good, that is possible without prejudice to the true and proper interest of each." With regard to the first part of this proposition, it must be said that a great deal has now been effected towards it; but with regard to the second, everybody must perceive that what has been done is but very little compared with what remains to be done. Yet the way has been opened towards it, and some illustrious footsteps are already imprinted along that path. Already do moral conquests appear to be superseding material conquests, and a great Potentate very lately declared, that it is worth more for one, in our days, to increase and extend his influence, than to occupy new provinces. And since to the nations, ever wishing as they must to perform great things, that blank obscurity or mediocrity, which favours

the leisure of individuals, is apt to appear undesirable and disadvantageous, it is therefore credible enough that those among them, which lack nothing of their own security and satisfaction, will turn to the glorious enterprise of elevating and benefiting the smaller peoples. Their first office in earning this glory should be to cherish assiduously in their own minds, and in those of others, a profound sense of the dignity of a State, whatever State it be, and merely because it is a State ; hence they will have to guard it, if it be weak, to defend it, if it be menaced, and to avenge it, if it be oppressed ; never relaxing, on account of the labour or danger, in their prompt and vigilant patronage of the law of European nations, when it is founded upon entire justice and equity with regard to all the peoples and each single one.

These blessings are not only within possibility, but we may hope for them, and behold some tokens and approaches of them now. Yet we cannot deny but in the minds of most men there is an impression, that it is force which governs the world of nations, and that the international laws, even more than the civil, resemble those cobwebs of the spider in which the gnats are caught, whilst the hornets break through with impunity. Nevertheless, for the encouragement of virtue and as a proof of the growth of our civilization, let these sceptics observe how the freedom of thought, which is now secured in many

countries of Europe, tends to convert them into a species of majestic theatre, where daily, from the benches of the immense range of spectators, arise loud voices either of approval or blame, which inexpressibly vex and disturb the insolent favourite of fortune, whilst they console and reanimate those who are injured and overborne. And be it remarked how the noise and echo of those voices are swelling, and how the wisdom and impartiality of the judgments which they express are augmenting, as liberty and education spread among the multitudes. This is the first and the ever-present Nemesis of the unjust deeds of the powerful. The judgment of History is the second Nemesis, not indeed present, not yet visible, but inexorable, imperishable, and certain. And it will perhaps be said, that History has not been hitherto silent, but has ultimately exposed and loudly denounced the crimes of the great and fortunate. That is true ; but what is new about it is this,—that History has gradually amended itself, better viewing and appreciating human actions than before ; and tearing off from the acts of injustice, fraud, and ambition of every sort, committed between nation and nation, their splendid disguises of a false glory and an uncivil supremacy. But more than this ; Philosophy, rising upon the wings of thought to a height above all the ages, and there comparing the histories of all the peoples, and the ultimate effects of every internal or external working

of theirs, now shows by evidence that profit and honesty do, after short separations, meet again and identify themselves with each other ; which indeed before was a matter of presentiment or divination, in the courageous conscience of the good.

Let us then take heart in searching out and publishing the last desires of the law ; and let us insist on proclaiming what is revealed and demonstrated by speculation upon it. Should those who are powerful not listen to it, or should they with contempt refuse to perform it, our duty is then with confidence to consign this great perfecting task to the hands of time, whose continual, interminable office it is to convert the order of ideas into the order of realities, gradually transforming that which *is*, into that which *ought* to be.

CHAPTER XVII.

HISTORY OF THE IDEA OF LAW.

OF the progressive perfection of international law we have written these few lines, enough to aid the mind in conceiving and figuring the whole of it. To describe this completely, and to finish every part of the profound design, the space of a volume would be inadequate. Meanwhile we have, with the help of these brief suggestions, better complied with the particular purpose of this book, which is to show in the law of nations those points at which it has most widely departed from what is right, and stands most in need of amendment.

In showing this, we have brought forward little that was new, and nothing unforethought ; but everything which appears in these pages of ours had been written before in the feelings of the multitude, and several of these doctrines were to be found already mentioned in modern books. It was requisite only to connect those thoughts and arguments together with scientific rigour, but without depriving them of that limpid simplicity which we will call the popular style, and which adapts them gradually to enter into the stock of common knowledge. We

thus have here an illustration of the Platonic opinion, that learning and knowing are no other than an effect of remembering.

If now, on the other hand, our principles be looked at in their due order, and as a whole, and if they be then contrasted with the daily facts and practices of politics and of diplomacy, it must be too plainly confessed that they constitute a New European Law, to bring which into active operation very much indeed is yet wanting. It is quite certain that the positive and, so to call it, the official law, under which civilized nations at present live, is that which issued from the Congress of Vienna; and perhaps there has never been a time in which Europe has had to tolerate a greater discrepancy between facts and ideas, between the principles and the applications, the law thought of, and the written law. We have related very precisely the causes of this contradiction, as it seemed to us necessary, whilst investigating the theory of the law, never to separate it from the history, because the latter is the unfolding of the former, and teaches not the dead and cold abstract form of it, but its life, its conflicts, and its final successes. To finish off this part also of our plan, we shall now, though with the utmost brevity, confront the archetype of law, just sketched out by us, with its effectual reality proceeding from age to age; and we shall see, on the one hand, how and how much it has been hindered on its way by

human errors, and still worse by the passions and wrong-doings of men; on the other hand, how reason, and a noble instinct, have never ceased to be obtaining some partial victories for it, and preparing still greater, towards which this our own age appears better disposed than all the ages that have come before it.

And since, in dealing with the theory of the law, we have set aside the more abstruse and scholastic speculations, exploring it always by the light of common sense, it follows that these historical notices will refer more directly to the immediate bearings of the idea of law upon outward life, than to the subtle and occult procedure of metaphysics within.

In the Middle Ages, there reigned as many species of codes and legislations as there were of valid and ancient institutions. Feudalism, the Church, the Monarchy, the Municipalities boasted each its own law, to which were added the vestiges, and afterwards the restorations, of the Roman law, besides the power of various customs, and the scattered, uncertain notions of a common and universal rule of right. From and after the middle of the fifteenth century, Europe emerged from the isolation, in which peoples and princes had seemed to be living, especially from the effects of the feudal institutions. The science of politics having been cultivated, particularly in Italy, to some refinement, began to

come across the Alps, and inform the statecraft of foreign kingdoms. The relations between one people and another were multiplied ; many leagues were formed, and many treaties registered between them ; and a continual anxiety was everywhere perceptible as to the aggrandizement of the adjacent kingdoms. In those days commenced the active and regular life of diplomacy ; and it could then be foreseen that some genius was about to arise who should indicate the basis of its legislation. Indeed, the abstract idea of international equity and justice began to sprout in the schools of the theologians, who were habituated to speculate on principles and to deduce from them a long series of consequences ; habituated, also, from the universality of religion, to take their flight beyond the partial and minute interests of this or that people, and to seek for the general and permanent interests of all the members of the great Christian family. By them, no doubt, was the road opened and prepared for Grotius, who certainly did not create the great doctrine of the natural right of nations, but took it out from the pulpits of the divines, delivered it from theocratic conceits, and bade it walk on by its own virtue and movement, though he tied it up more than was needful to the precedents of facts and to the sentences of authors. But still, learned and most acute as he was in judging of the inferior principles and their overlooked applications, he had

insufficient ideas of the constituent form of the State, the nature of Sovereignty, the perfect self-rule of the peoples, and also, perhaps, the nature and essential attributes of human rights. Nor would it certainly have sufficed to admit thus generally the original autonomy of the peoples, whilst also admitting, as legitimate and right in some cases, the slavery of individuals, the absolute and irrevocable power of princes, the total and interminable subjection of all ranks of citizens, as well as the external political dependence of States, the lawfulness of permanent conquests, and of assignments of provinces by dowry, bequest, or gift. And how was it possible to have discoursed of the inviolable liberty of nations in the times of Grotius, when the old traditions of the Western Empire were still alive in the latest successors of Charlemagne ; and when the Church arrogated the singular power of releasing subjects from obedience to their kings, or sometimes of breaking down the obligation of sworn compacts ; and when she decreed the annulling of the most essential clauses of a solemn Treaty, as she did with that of Westphalia, for example ?

Besides this, science ought to go her own way straight ; and though she always desires to reconcile facts with principles, and studies the best modifications and compromises between them, she never alters the substance of her doctrines to adapt them to the faulty bias of the contingencies and prejudices

of the times. But Grotius, in that strange conflict of a hundred jurisdictions, could not always retain the dialectic thread of science ; and he is excusable enough if he appears to look for reasons and exceptions to suit every singularity in laws or in events. What did him more prejudice than anything else, was the allowing himself to be influenced, more than was proper, by the feudal traditions, with which all Europe was still entangled, and from an effect of which it was that sovereignty, or civil authority and power in general, appeared to be a species of usufruct or property ; so that its possessor and lord managed it in his own way, and transferred it in almost any of the same modes in which landed estates are transmitted. But that this opinion should have then been received, need not be too much wondered at by us, who have seen how, even in our own days, the last vestiges of feudalism still endure, and the farthest consequences of its principles, though a thousand times they have been disavowed.

The effect of this, however, in the times of Grotius and those after him was, that the peoples disappeared off the stage of the world ; the idea of their inborn and imprescriptible liberty was dissipated, and everything was referred to the monarchs and to the royal prerogatives. Even where Parliaments were sitting and deliberating, we shall see, if we look at the general state of things, that they were scarcely invested with true political rights ;

but only with the power of refusing to grant the king a more or less quantity of their money. And though at different times, in England, in Holland, and in Switzerland, and in several of the free cities of Germany and Italy, there were some orders of citizens exercising full political rights, nevertheless this was held by the majority of jurists to be rather the result of old possession, conventions and privileges, than of the innate right, proper to and inherent in each congregation of men, to rule and govern itself.

It is also to be considered, as for Grotius, that he could not make himself effectually heard by any except the princes of his time, since a notion then prevailed, which has almost prevailed down to our own day, that international relations do not belong to the people, but to the government alone, or rather to the monarch alone; and this was accepted as a very reasonable maxim. Add to this, the common ignorance of the citizens in that respect, so that even if they had wished to occupy themselves with foreign affairs, the appliances of the necessary knowledge were altogether wanting to them; and, even at the beginning of the seventeenth century, this ignorance was not removed, except in the Italian republics, and in some popular States of Germany and Switzerland. In England, in the reign of James I., a son-in-law of his, elected King of Bohemia, had lost his crown. The English Parliament wished to

induce King James to undertake to regain it for him by means of a war. But when James sent them word that this would require the expenditure of 900,000*l.* sterling, the Parliament greatly marvelled and was astonished thereat, offering no more than a vote of 70,000*l.*, so little was it acquainted with the cost of a military expedition on the Continent !

But with all this, the eternal principles of rational law continued to make their way in thinking minds, and led them to meditate more freely upon what man is, and upon what States are ; for how could any influence of established customs or institutions put a stop to the march of intellect when it had once felt the consciousness of its own virtue and the presage of its own destiny ? In Italy, with the revival of classical studies, the doctrines and the opinions of Greek and Latin political authorities again took the field, and the sovereignty of the people was openly preached ; nor did the theologians oppose it, for they also, with St. Thomas Aquinas, had access to the Aristotelian fountain which had been dexterously turned on to irrigate the waste fields of dogmatism and of mysticism ; and they moreover perceived, that this absolute sovereignty of the social body might prove well enough suited to the exaltation of the Papacy ; which hence engendered that singular mixed theory, made up of theocracy and democracy, that we alluded to when discoursing of the relations between the Church and the State ;

and it was one which narrowly missed, in its day, becoming the sole foundation both of the public law of France, and also of the enormous Spanish monarchy. In the North of Europe, on the other hand, where the authority of Rome was gone, speculations upon the law tended very much in favour of the civil power and of the monarchy. But the turbulence of the peoples about the affairs of religion, and the intemperate zeal of sects, everywhere hurried the minds of men into excess. No bold conception, no rash or paradoxical conceit, was withheld from expression; and this was especially the case in England, in which country both religious and political innovations and revolutions, having been carried to an extreme, excited the most extravagant and whimsical ideas. Whilst the *Monarchomachi* exalted the omnipotence of the people, Filmer exalted that of the princes; Hobbes derived law and moral obligation from their very contraries, which are necessity and force; and lastly, all this speculation was crowned with the theory of the social contract, the prevalence of which, under various semblances, has continued down to our own days. For commencing with the great Flemish jurist, and following the course of opinion through succeeding times, we may always observe how, through an imitation of the civil law, writers were led to consider all social and international transactions under the form of a compact.

In Germany, however, the school founded by Grotius was fortunately carried on with the same

wisdom and moderation with which it had been commenced. For the peoples, divided in religion and in their interests as they were, fatigued and disheartened by the cruel and endless intestine wars which afflicted them, were fain to learn much more tolerance and conciliation, and obliged the jurists also to keep within cautious bounds. We may, however, perceive, in the writings of Puffendorff, of Vattel, and others nearly their contemporaries, how the doctrines of the law of nations had become more refined, more comprehensive, and better subordinated; how their arguments and proofs were conducted with increasing rigour; and how at length, especially with Vattel, large principles of liberty began to prevail, and an unwonted reverence for the inward and outward rights of nations. But the philosopher of Neuchâtel composed his works in countries where the Reformation, from its opposition to Rome, had been inclined very willingly to amplify the majesty and power of the monarchs; whilst on the other hand, Rome herself, seeing that the omnipotence of the principle of Authority was declining in the world, was now closely allying herself with the monarchs; nor would she, for instance, have lifted up her voice to protest against any infraction of that famous clause of the bull *In cœnâ Domini*, by which it is forbidden to lay fresh taxes on the people without their consent. Besides, the times were come, in which, as we have already mentioned, the monarchies transformed them-

selves into dictatorships ; and the multitudes remained so alien to all politics, that they had to lavish their blood and their treasure in long and disastrous wars oftenest without ever being apprized whence and to what end those wars were being waged, as we read in the satire of *Zadig*, in the shrewd fictions of his Oriental history. The kings, in the exercise of that faculty of foreign affairs which was left entirely to their discretion, enjoyed such an excessive power, that even the very Ministers appointed by them to rule the State were most frequently ignorant of the mysterious policy, which other agents, by quite other means, managed for secret and dishonest objects ; this was the every-day practice of Louis XV., having been begun by his predecessor. From such causes, as we just now remarked, although several parts of our science were, by those German jurists, and especially by Vattel, well weighed and concluded in accordance with reason, and with the counsels of humanity, and with a high respect for the dignity of our being ; nevertheless, the full, absolute liberty and equality of States, the observance due to their suffrages, and the intrinsic genuineness of their representation in Courts and Congresses, the right and principle of spontaneousness and of nationality which we proclaim, the prohibiting of interventions, the reciprocal independence of State and Church, with some other subjects of this order, made up an amount of matter with regard to which the writers partly

dared not say all they knew ; and partly they had, as yet, but very uncertain and immature opinions, or of which, at any rate, they could not hope for any sincere or speedy application to realities.

In order to arrive at a higher standard, it was requisite that the doctrines of liberty, having become vehement and busy, should triumph in the internal affairs of several countries, and attain to the conception, in its full substance and with all its attributes, of that which in England is known as the government of the State by itself. For it is always from the inner and fundamental constitution and liberty of the State, that the same principle comes to be applied to its outward relations, and not *vice versâ*. The first French Revolution therefore initiated a grand and new era for the idea of international justice ; but I do not say that it greatly enlarged the abstract science thereof, or brought many of its branches to perfection. It broke through the bonds and wrappages which had, confining it on every hand, forbidden it to move straight on towards its consequences, and to put them in practice adequately in the most important acts of the outward life of nations. By the French Revolution, the people emerged, as it were, from the waters of oblivion, and seemed all at once to remember its own dignity and power ; in many provinces of Europe it declared that it would no longer have a master, and that it had passed for ever out of the pupil state. Hence it must arise,

later on if not betimes, that Europe would no longer be ruled by the personal and individual policy of princes ; and that the States' would assume that form and order which Nature suggests to the common instinct of the enlightened multitudes, and to the particular instinct proper to each of the various races. This would prove quite sufficient to produce in time a profound modification of the whole system of international relations. And all this went on *pari passu* with the advanced education of citizens, which made it impossible to keep the science of statesmanship, or the arts and managements of diplomacy, any longer under an exclusive seal for privileged inspection.

We have compendiously, but exactly, related the principal causes by which the kings were induced to wage against the new principles a desperate contest ; and we have recounted how by the excesses of demagoguy, the scandal of extravagant and irreligious opinions, and the errors of Buonaparte's genius, the ascendancy was for a long period given to the monarchs ; who, besieging the whole of Europe with their huge battalions, and doing what they pleased in the Congresses of Laybach and Verona, by dint of a principle of licensed and assiduous intervention, attained the topmost height of authority and power, till " the earth lay silent before them." But everything that is forced and artificial stands nearest to the precipice, when most it ap-

pears to have devoured and annihilated the forces that were opposed to it; and, after its authors have been labouring for many years in its construction, they see it in a few hours spoiled and destroyed. It was but four years after the Congress of Verona that Greece, a free kindom, arose, and in Portugal, with the assistance of England, a parliamentary government arose. The people of Paris in 1830 rose up, dismissed their king into exile, elected a new monarch, but assigned to him very limited powers, and proclaimed on all hands the people's sovereign right. The Belgians on their part, forcibly breaking off their conjunction, which was not spontaneous or free, with the kingdom of Holland, willed to be self-ruling, and they became so. The league of princes, disorganized and half shattered asunder, assembled in London to deliberate and consult; but they were fain to sanction what was already a fact, acknowledging that the Holy Alliance was dissolved, and that its maxims were practicable no more; Metternich and Talleyrand beheld the altars overturned, and the priesthood scattered, of that spurious deity to which, in the saloons of the Vienna Congress, their incense had been so copiously burnt. It is true that Austria and Russia did not forego their wonted style of absolute proprietorship, whilst they counted a million of soldiers. It is also true that the incoherent movements and unformed opinions of 1848 seemed to result in once more setting afloat the stranded

supremacy of the edicts of Absolutism. The harpy talons of Austria fastened again more deeply and painfully than before on the body of Italy. Germany, which had been half aroused, fell asleep again; and France acquiesced in a Dictatorship. But their triumph was but fleeting; for no sooner had this opulent age, which cannot bear to be distracted from its merchandize, recovered from that brief dismay, than the liberal tendencies among the peoples, and what are called democratic ideas, started again upon their road more vigorously than ever. Yet the dissension we have noticed between the old facts and the new ideas, between the literal text of treaties and the spirit of our age, becomes wider every day; and the substantial reformation of the European settlement is now so great a need, for all the nations and for all the governments, that to retard its accomplishment would be immensely difficult, while to prevent it, or to forbid it, is impossible for any mortal power.

And that which in our view tends chiefly to hasten this on, is the final explanation of the prime idea and type of law. For so long as it was averred, especially in France, that justice, that right, that sovereignty, and that authority emanated all of them alike from a human source, the moral and religious sentiment took umbrage at such pretensions, and the fruit they bore was that of paradoxical and empirical doctrines. But a maturer Reason, in learned

and unlearned minds, has now come to prevail ; and it has come to be acknowledged that Right and Justice, Authority and Sovereignty, are those eternal and absolute things by the rule of which it is that mankind prescribe all their statutes, erect all their tribunals, and exercise the duly allotted empire and custody of civil and political life. But no man is ever the special delegate of God, or by God immediately appointed thereto. It is the Moral Law which reigns ; it is Reason which reigns, according as human intellects are enlightened by it ; and only he, who might be favoured with a superior illumination, could be designated a Legitimate claimant to govern his kind.

CHAPTER XVIII.

THE LATE PARIS CONGRESS, AND A GREATER ONE,
NOW WANTED.

OF what profit to civilization was the campaign fought in the Crimea, we can scarcely estimate. But certainly in the Congress of Paris, and in the treaty which followed it, the fact, which I have more than once myself in the Subalpine Parliament had occasion to declare, did really take place, namely, that the advent of a new and better law of Europe was intimated.

Very laudable resolutions were passed, for completing that which former Congresses had begun, with respect to the free navigation of rivers; and recommending that before any war breaks out, the mediation of some neutral power should be sought. Nothing would, in our opinion, have been lacking to the wisdom of this second provision, if it had been enunciated as a general principle, instead of appearing as an engagement assumed between those princes who were the contracting parties; and if to that resolution had been annexed another, quite in conformity with it, that in every treaty of peace, either in the first overture towards it, or before it is

concluded and ratified, the help *officieux* of one or more neutral potentates should be asked for. I do not think it will be said, that this interposition of the peacemaker may prove sometimes inopportune and useless, and that it never does prove so in the other case, of an imminent probability of war. Between these two cases, I cannot perceive any such difference. If the war be firmly and obstinately intended, is it not then true that the mediation requested will turn out to be a mere ceremony and nothing else? A ceremony likewise, but not very burthensome, the introduction which we contemplate of a peacemaker would be, wherever there happened to be less necessity for his co-operation, or wherever one of the two parties stood immovably fixed upon the conditions he had proposed. But in most cases, we believe, that both these customs will tend in the same way, either to prevent war, or otherwise, by establishing peace with the greatest possible equity, to make it sincere and durable.

The abolition of privateering, also, was an act which has given the late Congress of Paris a glorious title to be remembered by posterity with especial gratitude; as well as for its having confirmed those two most humane maxims; one, namely, that the neutral flag protects the cargo; and the other being the prohibition of a fictitious blockade, that is, a blockade which is declared on paper, but not put in execution or effective.

In this same Paris Congress of 1856, it cannot be denied that the Pentarchy still continued its illegitimate domination. Upon a slight pretext, they invited Prussia to deliberate upon those affairs in which she had not partaken ; and Austria, which had remained inactive, was invited ; and this was done in order to maintain, for what are called the first class Powers, the odious privilege of consulting and deciding by themselves upon the affairs of Europe, whilst keeping in the background all the minor States.

Nor was it quite a novelty to have admitted into their meeting the envoys of a kingdom like Piedmont, of small resources. In the Congress of Vienna, a seat had been allowed to Portugal and Sweden. But, at Vienna, Russia, England, Austria, and Prussia had joined together in a species of *quadrumvirate*, by whose will and discretion it may be said, the issues of the general Conferences and of the special Committees were guided. In the Congress of Paris, however, the liberty of suffrage was much better respected ; and it seemed as though the votes of Sardinia and Turkey weighed no less than those of greater potentates. It is true that the most intricate and delicate points of controversy were placed upon the green table, already in a half-decided shape. But it is also true, that several subjects unforethought and unexpected were produced there, which underwent the ordeal of a free discussion, animated and *inter pares*.

And we should not omit to notice the ordained publication, through the printing press, of the *procès verbaux* of those conferences, in obedience to a necessity of the present times, which will not let anything be withheld from the knowledge and judgment of society in general.

But, coming now to matters of more substantial moment, we have firstly to remark that, in the Treaty of Paris, there is only one point of the Treaty of Vienna cited, which is with regard to the free navigation of rivers; and out of the whole of the remainder, it confirms and gives renewed validity to nothing; leaving to the peoples their entire faculty of modifying, at their discretion, that part of the existing public law which we have called corporeal and accidental, and which had assumed at Vienna some shapes not very agreeable to the rights of the nations.

What is indeed remarkable, in this Paris Treaty we are adverting to, is the abstinence from, and putting away of all the spirit of conquest, maintaining in this Peace the character which had been impressed upon the Crimean War, of which it had been solemnly announced that it should not bestow any title or any occasion for acquiring territorial possessions; and thus implicitly affirming that which the Law exceedingly desires, namely, that every people should belong only to itself, and never to another; and that a victory of arms, though it may bring in with it many serious and strange results,

should never go to the total or partial annulment of the autonomies of the peoples.

In the third place, by this Treaty determining that the Roumans should, in a convenient manner, be asked what was their own desire, and that the utmost account should be taken of it in the new settlement of their provinces; and, moreover, that Turkey should not be enabled to arrogate to herself any intrusion into the course and management of their administrative affairs, the Congress thus came to lay down two very salutary maxims. The first maxim is, that the lot of any peoples, however small and unarmed they be, shall not be disposed of without their own suffrages, or contrary to them, and with no regard to the sound and irrefragable principle of nationality. And the second maxim is, that by little at a time, and so far as the text of existing conventions may allow, are to be abolished every condition of vassalage, every species and manner of dependence between the States. Hence the special protectorate of Russia, over the Danubian peoples, was superseded by the collective one of all the contracting Monarchies, and this only in the form of a guarantee, or engagement of defence, without its bestowing any privilege of authority or interference. The principle of Non-Intervention received in the late Paris Conferences a tacit confirmation, inasmuch as no fresh occupations of alien provinces were debated, but instead of that, the

cessation of those already existing in Greece and in Italy was talked of. It is true that, in the Treaty, some reference is made to the possibility of an armed intervention in the Danubian Principalities, with the previous consent of all the States contracting parties to that Treaty. But this chiefly arises from the ambiguous existence of those provinces, which have never been declared sovereign and completely self-ruling. Notwithstanding that, the rule of equity requires that we should censure this instance of admitting the possibility of an armed intervention; nor would such an act become less illegitimate because it was consented to by several parties, or because it was executed in tributary provinces not yet much advanced in civilization.

And lastly, in the Conferences of Paris, the appeal of the oppressed Italian provinces having been heard, and the majority of the plenipotentiaries there present having accepted well enough the proposal of France, that the governments of those provinces should be earnestly entreated and warmly solicited to correct their ways, and no longer to persist in thus compromising the European peace, an example of great importance was displayed for the imitation of all succeeding times. For in the first instance, armed interventions were exchanged for moral and pacific interventions, and the tranquillity of Europe was deemed to be a sufficient object to justify, not the use of coercion, but that

of the authoritative efficacy of counsels and of exhortations preferred in common. And in the second instance, for populations unfurnished with any of what are usually termed recognised rights, and devoid of any official representation, a way was opened to make their own voice heard and to get their own grievances considered. Adding to this the particular measures, which France and England afterwards thought fit to adopt in order to satisfy the clearly-expressed desire of the Congress, two other merits may be indirectly ascribed to the Congress of Paris. The one is, that when they recalled their own representatives from the Court of Naples, France and England did not proceed to any act which infringed by one hair's breadth the sovereignty and independence of that kingdom. The other is, that whereas formerly exhortations, comminations, and weapons had always been employed to bend and trample down the necks of the peoples, and for the boundless exaltation of the monarchs, the inverse process was now discreetly commenced, and it was publicly avowed that there was a limit to the royal prerogative, and an original, constituent liberty of their subjects. All which derived a greatly enhanced value from this circumstance, that one of the contracting parties to the late conventions of Paris, indeed the one most imperious and dreaded, prided himself upon deriving his own sovereignty from the popular vote, and showed that he would

not willingly permit anybody to keep up a dominion, either by foreign arms, or by forcibly binding together diverse and hostile populations.

In conclusion, what is the judgment we shall pass upon the late Conferences and the Treaty of Paris? In our view it appears, that thereby was reduced, by a little space, the great interval which separates the Congress of Vienna from the present political disposition of Europe, and from the notions and maxims of common science at this day respecting the mutual and sacred rights of States. Still, the way which yet remains to be traversed, that this distance may entirely be overcome, is a long and a difficult road, as will be seen by everybody who reviews the matters discussed in our book, especially in the two chapters preceding this. There is, however, no person unaware now of the stringent necessity of following up the diplomatic task initiated at Paris. The supreme opportuneness of a General Congress of the European States appears to be daily more acknowledged by the universal desire; and from this the best and fittest remedy is hoped for the prevailing uneasiness of mind, for the discontent of many peoples, and for the apprehensions which are justly aroused in everybody by those huge standing armies, so immoderately augmented, which are no less threatening to liberty than to the public wealth and peace. Surely, after the discredit into which diplomatic meetings seemed to have deservedly

fallen, this fact of our confiding above all other means in a grand council of the representatives of the peoples, that is to say, in pacific and free discussion, in the conciliatory spirit of all good men, and in a common deference towards the power of truth and persuasion, is a fact which does no small honour to the wisdom of the age, and writers ought much to congratulate themselves upon it. In several passages of this treatise, especially in Chapters VII., VIII., and XV., we have shown by what arrangements and attributes these solemn diplomatic assemblages may be rendered fruitful of great good to the less fortunate of the nations, whilst they may confine themselves strictly within the due limits of international liberty and equality. These provisions are easily set forth and ordered under a few leading maxims, which here follow.

They are, firstly, that the procedure of Congresses, and especially of General Congresses, should not be deferred until after the disturbance of long and terrible wars; but that fairly in the midst of peace, with tranquil mind, exempt from anger and partisanship, they should confer upon the common business.

Secondly, justice requires that, in the Congresses, by their presence and their deliberative voice, all those should assist whose rights and interests are implicated in the subject of conference. And whenever any substantial alteration of the actual European law is to be effected, it is plain that

all the States ought to be enabled to dispute and deliberate, which recognise and which practise that law.

The usage which has become prevalent, of convening the few Great Potentates to resolve, by themselves alone, the gravest questions of principle or of application, and afterwards requesting or expecting the adhesion and assent of the others, is one not without much prejudice and peril, as well to the complete spontaneousness of the adhesions, as also to the examination, and to the free and impartial estimate, of the fact or principle in question.

Thirdly, there should not be any directing committees of the Congress, or any other mode of exerting an undue ascendancy over it, to the damage and disparagement of the smaller Powers, and contrary to the principle of a perfect parity between the States.

Fourthly, the representation of the several parties in the Congress should be genuine, that is to say, not a personal but a national representation, of the States and not of the Kings only ; and likewise, the true and final ratification should proceed either directly or indirectly from the people.

Fifthly, the appeal of every people, whose affairs are deliberated upon, should be heard, and the Congress should take sufficient cognisance thereof, or as fully as possible.

Sixthly, nothing should be resolved upon against

the general, sincere, and manifest wish of the populations concerned ; and the most convenient means of ascertaining this should be studied.

Seventhly, in conventions and treaties it would be an useful practice, by declarations or preambles, or by some other writing, to enunciate the principles of law which are involved in the special facts and applications they refer to, and not, as is always done, omit them and leave them to be understood.

Eighthly, it would be well, upon certain occasions, to imitate, though with quite different ideas and language, the example set by the Holy Alliance in promulgating a certain manifestation of solemn truths ; and in signifying to all the world the most general and most essential maxims belonging to those three heads, on which justice and friendship between the peoples depend, and which are, the *Self-rule*, the *Parity*, and the mutual *Charity* of Nations.

Ninthly, those amendments and reforms ought not to be passed over in silence, which it is desirable should be speedily and voluntarily executed by any of the Powers ; thus, for example, the employment of foreign mercenaries for the internal guard and defence of the State may be spoken of as disgraceful and tyrannical ; or it may be recommended, that any derogatory and interested protectorates, or any manner of dependence of one State upon another, should cease ; or that any very unbecoming and

THE PARIS CONGRESS, AND ONE TO COME. 327

injurious anomalies in the substantial and fundamental system of the political rule of a nation, should be put an end to. There is no objection to such wishes as these being expressed, at least by the Powers who do not lie under that reproach, upon the occasion of any compact or convention being made between them.

Tenthly, the Powers being unable to agree on the immediate execution of any reforms, or ameliorations, a formal promise in this respect should nevertheless be given, to be realised within a certain time, and with a certain latitude in the mode of carrying it into effect; as was done at Vienna, in the declaration with regard to the Slave Trade, and as we may read in the Germanic Federative Compact, the promise which they made in common to establish representative Governments within a certain time.

Eleventhly, the acts, or protocols, as they are termed, of the Congress should be published without much delay, and none of them should be kept back from public opinion, and in the treaties or conventions there should be no secret clauses.

Twelfthly, everything should proceed, should be completed, and put in effect without any alteration of the reciprocal liberty, equality, and independence of the peoples which are the contracting parties thereto.

All this belongs to the internal operation of Con-



gresses. Something is to be said of them externally ; for there it is that they are really pre-arranged and initiated ; they ultimately prove to be such as they are, and entail such consequences as they do, according to the particular disposition of the time, the place, and the current opinions. With regard to this, we have observed that it is above all things necessary that there should be a wide diffusion of the ideas of international justice ; and the next thing necessary is that substantial uniformity in the internal constitution of each State, which has been described ; in fine, that the congregation or disjunction of the peoples should be caused or modified, not by force and factitious means, not by the wrongful interference of foreigners, but by the profound and perpetual laws of spontaneity and nationality.

If, in the future conversations of diplomacy, a great part of these conditions be fulfilled, then the peoples will not have been deluded in building their hopes upon its action, and invoking with such ardent desire a General Congress, by which the botched work of the Vienna Conferences should be taken up again and better accomplished. But that we may look at this matter, also, from the point of view of the ideal archetype of law, to which we have devoted some consideration, it behoves us to ask whether, for the development and effectual progress of international law amongst mankind, the best and most convenient organ *is* this conferring and de-

liberating together of the spokesmen and representatives of the States of Europe.

If we look at the civil law of each people, there seem to be not more than two methods adopted for its development and for its amendment. Sometimes, a people has thought its best course was to meet in a general constituent assembly, at certain extraordinary epochs, with the bold intent of re-making from its very base, and by a pre-arranged design, its political edifice and the greater part of its code of laws. To others, on the contrary, it has appeared, that this demolishing, as it were, the whole past, at a single stroke, and composing at once the entire civil and political order of things, by the inexorable rule of certain abstract and absolute principles, was a rash and dangerous undertaking. Hence they have kept to the way of reforming and renewing the whole very gradually, and bit by bit, making a daily and not an inconsiderable compromise with the adverse interests, opinions, and habits.

The inconveniences, and the advantages, of both these manners of developing and reforming the law, have been discussed with rare sagacity and learning ; and the wisest men have concluded that the greater or less fitness of either of the two ways must be determined by the nature of the times and circumstances, and still more, by the diverse temper of the peoples. It has also been disputed, whether it is not better for the sake of the law, for the large,

speedy, and harmonious unfolding of it, to have the dictatorial will of one great man prevailing, than to consign it to the collective thought, the divided knowledge, the less resolute and united will of ordinary parliaments.

How can all this be applied to the development and progress of international law? Certainly, we do not think Europe can at this day submit to the dictatorship of any Caesar or Charlemagne to amplify or reform, at his discretion, the code of the nations. Not quite so remote from possibility might be the intellectual dictatorship of a marvellous genius, who should impose upon all the civilized world the wisdom of his dictates.

But assuming, then, that international law cannot acquire any considerable extension except by the collective work of the States, we have yet to ask whether Congresses, which are like the parliaments of the universal commonwealth, do prove the best instrument for the corrections and enlargements of the law of nations; and in short, whether it would be feasible and profitable to convert the general and extraordinary meetings of the diplomatists into anything resembling a Constituent Assembly.

It may be said, that international law has, for the special organs of its double growth—that is, of its ideal and of its real development—firstly, the process of speculation and science going on in the intellects and in the books of the publicists; and

secondly, the infusion of the most essential and evident portion of their results, into public opinion, and into the generality of educated and well-informed minds. On the other hand, it also has the daily converse, the assiduous correspondence, and the frequent negotiations going on between the governments of Europe, through the legations which each one of them maintains and constantly renews in residence at the courts of all the others; and it has the existing contracts, conventions, general and particular treaties, in which the entire mass of the positive law of nations is collected and arranged, having been continually drawn from its proper sources, reason and common usage.

These diverse means of progress are intimately connected with each other, and the three first-mentioned do ordinarily prepare for, and lay down conditions for the last. The science of the jurists does by degrees influence the judgment of the educated multitude; and this latter exerts an influence upon the daily practices and relations between one government and another. Lastly, the authority of all this comes to bear upon conventions and treaties; for it seldom happens that these last are in advance of public opinion, much less of science; though events have testified that this may sometimes occur, of which the first treaty of armed neutrality between Russia and Denmark was perhaps an example.

It will be seen, that herein lies no slight diffe-

rence between civil and international law in their respective modes of proceeding. It is, however, true, that in the same way in which, at extraordinary times, a people summons extraordinary parliaments, and lodges ultimately all its confidence in a Constituent Assembly, so does Europe, notwithstanding the delusions from which it has suffered, persist in hoping for a grand and general Council of Diplomatsists, and in hoping from it daily more; deeming that new principles, or at any rate, new and inevitable necessities, have everywhere made themselves felt, which are knocking loudly at the door of the most retrograde courtiers, and demanding to be let in to govern the public weal. But, notwithstanding this, we must remember that the power of a Congress of diplomatsists is greatly different from that with which a Constituent Assembly is invested. It may in appearance not be so; because convening the peoples together, or to speak more exactly, their representatives, who are the free authors of certain common laws and arrangements, they are not forbidden to agree for the substantial changing of those, provided that they depart not from the eternal and undeniable rules of reason and justice. We nevertheless repeat, that this virtual omnipotence of the peoples represented in a Congress does, in fact, result within very narrow limits, at which we ought to feel satisfaction, rather than regret. For who

would like, in our own day, to have that enormous and terrible arbitration renewed, by which the fate of the peoples was decided at Vienna, and by which territories were divided and allotted? Besides, that unhappy power, employed with such a vulgar wisdom, had only become possible from this, that Europe, having been convulsed and disfigured all over by thirty years of wars, revolutions, and conquests, had lost the sentiment of its proper being, and obscured the light of the great truths of social justice, and so fell into the victor's hands, as it were a formless and uncomposed mass, ready to take any sort of mould or impress.

The faculties which may be effectually exerted by a general synod of the representatives of peoples are, in my opinion, restricted to the following.

It can adjust many of those disputes, arising out of particular events, which are kept alive and bitter by the immoderate pride, or by the passions of some jealous and envious States.

It can establish compacts and agreements of universal advantage, but with regard only to those objects which have little or no connexion with the principles or with the supreme interests of political existence; such as the objects of free trade, or of regulating the navigation of rivers and straits, or of dealing with doubtful points of consular jurisdiction, settling some details of the private international law, and many other similar matters.

A Congress may also propound maxims of a stricter international justice, and invite all civilized powers to accept and apply them. It may fore-ordain certain ameliorations and completions of the common system, to be carried into execution at such time, and by such means, as may suit the various possibilities or the convenience of the different peoples and governments.

It is competent to a general Congress to settle afresh, if an occasion present itself, that which we have called the corporeal and accidental part of the positive law of the European nations, and which yet proves the most difficult to manage and transform; although where, on the other hand, it is not satisfactory to the peoples and to public opinion, it provokes tumults, discontents, insurrections and wars, or delays at least, and prevents the growth of a fair and loyal friendship amongst all nations. Unfortunately, however, we do not believe that a diplomatic assembly, even were it formed of plenipotentiaries of the highest ability and integrity, can avail to bring about important and permanent alterations in the territorial and political form of a single State; unless, indeed, the latter be so feeble, and so poor of friendships and protections, as to be quite incapable of defending itself in any way against the others' deliberations. It is evident that in a diplomatic Congress, when the majority do not, as they too often have done, assume a discre-

tion to decide by themselves alone, and without any appeal, upon the lot of the minor potentates, no arguments of justice, equity, or convenience are sufficient to persuade the latter to yield up any considerable privilege or advantage they may possess; for to do that would require, in States, a degree of sincerity and self-abnegation for the common good, which, however desirable, is not to be pretended or hoped for at the present day. And this remark is even more applicable to the case of the Great Powers themselves, where they are concerned. The function, therefore, of removing from the actual settlement of Europe its worst anomalies, and bringing it nearer to the principles of true social justice, cannot, in a Congress of free peoples, amount to anything else than that of fixing the seal of its authority upon changes which have occurred, or which are imminently at hand; and of better regulating their form, and of solemnly recognising the rule of right by which they are absolved and legitimatised.

What then is above all important, for the world's peace, and for the progress of sound law, is just this: that in the minds and in the moral sense of men, the best preparation should be made for diplomatic conferences, and for the treaties which result from them; and that, as we have already urged, the rule of spontaneity and nationality, with the other admirable ordinances and tendencies of Nature,

should, by degrees, everywhere triumph. Perhaps, the growing confidence which the world now seems inclined to repose in a Constituent General Congress arises from this consciousness,—that new principles are now beginning to hold discourse in the common intelligence, and that liberty is hatching these young ideas beneath her wings; nor can the might of armed battalions hereafter suffice, nor that of antiquated theories, to hinder and to reverse the sprightly and ever quickening elevation of the various races of mankind, and their firm purpose that all shall compose their civil congregations according to their own desire.

Looking onward and upward, to the ultimate summits of that perfection whither the progress of European Law aspires, we clearly see that nothing would be found there opposed to any normal principle of liberty and justice, even though such a provision related only to that which we have called the corporeal, mutable, and accidental part. Imagining that, with such excellence and purity of international life, a meeting and colloquy of the representatives of nations could then take place, we cannot doubt but that its subject and end in view would wholly refer to something right and good, and in complete accordance with all the maxims of equity. But, amidst the contingencies of our own age, it can never be presumed that a general Congress of the diplomatists, even though it keep aloof from every

kind of excess or of injury in the new arrangements which it fixes or initiates, could avail to abolish, from the European settlement, all that mass of facts, which have so long existed, contravening some of the decisions of the science of law. But the utmost mischief would be done, if the conventions or treaties there settled and concluded were to give full validity and sanction to those existing effects of ancient violence and usurpation. If this were to be done, in the latter half of the nineteenth century—since the empire of public opinion and of the universal conscience has been founded, and since that which we may call the *Instauratio Magna* of juridical reason in the world of nations has actually commenced—if this were now to be done, how hard it would be for our minds to keep still open to any faith in Truth and Justice !

The future Congress, therefore, and the Treaties to proceed from it, must avoid with all diligence the serious risk we have here pointed out ; and there are three ways of avoiding it.

In such treaties, firstly, no mention is to be made, as in the late Treaty of Paris none was made, of the most prominent arrangements of the former Congresses ; and the custom which has heretofore been observed of citing Westphalia and Utrecht, Vienna and Aix-la-Chapelle, must be foregone. From this silence, if no condemnation of many of the unlawful

deeds in past times can be deduced, neither shall any confirmation or approval of them be derived from it.

In the second place, where such facts cannot immediately be amended and completely altered, let every expedient be studied whereby some gradual, not too remote, correction and redress of them may be promised.

And, lastly, even if prevented from doing this, let the Congress at least be allowed, by some kind of a solemn declaration, to signify a common and not quite a hopeless desire, that, in certain instances, the actual discord or conflict between facts and principles may disappear ; or, rather, if we would speak more abstractedly, that certain recognised principles may not continue to be subjected to false and erroneous applications.

Here, too, as it becomes us to express entirely our own thoughts and wishes, we will say, that perhaps it may belong to that future Congress, whose practicable perfections we have in view, to proclaim and to enumerate, in a distinct manner, all the supreme axioms of international justice and friendship, in accordance with the freshest and the largest intentions or meditations of philosophy and of practice. This Manifesto, put forth by the potentates, would prove, we think, majestic, worthy, and authoritative, above all estimation ; it might be compared with that which the French Assembly put forth, styled the " Declaration of the Rights of Man." From

THE PARIS CONGRESS, AND ONE TO COME. 339

this alone it would result, that the facts which still materially contradict such determinations would lose, even in the letter of treaties, their normal and juridical existence.

But if this be too much to desire, and beyond hope, let the future ministers plenipotentiary of a general Congress at least not refuse to repeat, in more precise and specific words, that which, in 1818, the diplomatists at Aix-la-Chapelle declared in the face of the world,—“That the monarchs would, in their relations between themselves, as well as with other States, observe most strictly all the principles of the law of nations.” Then certainly, either these principles were perversely misunderstood by those diplomatists, or else they must have condemned, as unlawful, several clauses of those very conventions which they had already stipulated.

On the whole, the thing which most concerns the future peace, the faith of treaties, and the satisfaction of consciences, is this ; namely, that the Congress which is to come shall not confound together, and shall not confirm with the same sanction, those facts which are merely tolerated for the sake of not plunging the world into a worse convulsion, and those very different facts which do perfectly correspond with all the conditions of good and of right.

But let it not, after all, escape our remembrance, that if we would have justice in this world, there is great need of preaching it up everywhere and always,

in the schools and in the streets, from academical chairs and from the housetops. And as the Levites of the Hebrew people, by sound of timbrel several times a day, declared the psalms to be recited and the ritual to be observed, so it behoves the band of the honest and wise at every instant to remind both the Governments and the peoples of all the lessons of international equity; declaring whatever, of more accurate and wider meaning, may by the study of learned men, or by the enlightened instincts of the cultivated multitude, be contributed thereto. This endeavour of their vigilant intellects and of their disciplined wills does gradually excite, and render efficacious even in the counsels of the greatest and most powerful on earth, that sense of shame which, as Vico says, is the guardian deity and revealer of the moral law. And if it was Shame that first drove, by its secret prickings, the human individual to quit his beastly gorging for the sweet delicacy of a family table, and to come out from his dens and caverns, to dwell in the sociability and comfort of cities, the same virtue will not cease to overcome by degrees the backwardness of pride, avarice, cold and ruthless egotism in the nations and in their chiefs. Civilization must be deemed to have made no small progress already, when it has made the old statecraft capable of feeling compunction and remorse.

CHAPTER XIX.

PRINCIPAL CONCLUSIONS.

HAVING arrived now at the end of our contemplations, it appears to me that the most convenient and expeditious mode of enabling the reader to extract from their substance what is worthy of remark, is to set before him the leading maxims of the New Law of Europe, thus conceived and initiated, in contrast with those maxims which the treaties of the Congress of Vienna either express, or apply, or leave to be inferred. Taking first the latter set of maxims, we say that they were principally these :

I. The power of monarchs is absolute ; a people has no rights superior, or equal to theirs ; and it can never depose them, or transfer the crown from one head to another.

II. The whole State is identical with the monarchs. The ambassadors sent to the Courts and Congresses are, above all, *their* representatives. And whatever the monarchs negotiate or conclude, personally or by means of their ministers, is concluded by the State, whether their subjects will it or no, and whether they assent to it or dissent from it.

III. Every prince has the option of asking for,

and may legitimately obtain, the aid of foreign arms against his own subjects. He has likewise the option of hiring the vilest mercenaries from every land, to suppress, by means of them, the discontent of his subjects.

IV. Every popular liberty is from the bounty and munificence of the prince ; and a revolt, howsoever occurring, may cause it to be revoked and annulled.

V. Provinces are exchanged and distributed between the potentates, either by the right of war and conquest, or by compacts and arrangements made between themselves. The consulting and adhesion of the inhabitants is not necessary thereto.

VI. There is no such thing as the right or the principle of spontaneousness or of nationality applicable to the formation and altering of States.

VII. Several crowns may be worn together upon the same head, and several nations may be kept dependent one upon another, in various forms of subordination and subjection.

VIII. The legality of treaties should prevail over the evident reason of whatever juridical principle may stand contrary to them.

IX. The affairs of all Europe, and the whole European law, are to be maintained and modified by the Pentarchy. The minor potentates, one by one, give in their adhesion to any changes thus ordained ; or if they should not do so, it would be of slight importance.

X. The peoples, not officially represented at the Courts, have no right to appeal to diplomacy against their oppressors ; and they should then be accounted by diplomacy as turbulent and rebels.

XI. The Protestant Princes govern at their own discretion the Reformed Churches. The Catholic princes make Concordats with Rome, in such a manner as either to subject the Church, so far as possible, to the State, or else to turn the concessions which they bestow upon Rome to the damage and to the repression of the natural and spiritual liberty of their peoples.

Now, in opposition to these edicts of the Vienna system of law, we have delineated the grounds of a new European jurisprudence, born out of the womb of science, and out of those reflections which are common at the present day with the educated many throughout the world, and enhanced by certain events of great moment, which are surely now initiating a better order in the community of nations. The following are the principles of this law.

I. The absolute sovereignty is that of Reason and Justice. Neither the princes, nor the peoples, possess it. Only those who are the best in knowledge and virtue have a right to exercise it, as distributed to them, and within certain limitations.

II. That government is Legitimate which has the consent of the governed, and which competently satisfies the progressive aim of society. Every govern-

ment which lacks these two conditions, thereby becomes illegitimate, and it then becomes the duty of the citizens to change it. We may dispute ever so long about the propriety of their choice, and about the legality of their mode of changing the government ; but we cannot deny the necessity of its being done, or the goodness of their object.

III. The State is not identified with its monarch or other head ; and its representatives at foreign Courts and in Congresses ought with truth and frankness to represent the nation, its interests, and its thoughts.

IV. It is iniquitous for a prince to request the intervention of foreign arms against his own subjects ; it is unjust and oppressive to grant their use. And for him to employ against his own people a medley host of alien mercenaries is a most disgraceful thing.

V. The inward liberty or selfrule of the peoples is subject to no measure or limit, except those prescribed by morality and political wisdom ; and the principle of non-intervention is, without any exception, to be maintained.

VI. Civil communities are to compose, enlarge, or, on the contrary, to dissolve themselves, in accordance with the right and the principle of spontaneousness and nationality. Their indissoluble and sacred bond consists of a voluntary moral unification through the sentiment of *their own country*, in its full, true and essential significance.

VII. Permanent conquests do not abide in lawful right ; although many of the ancient conquests have acquired a legitimacy, by the victors and the vanquished coming, at length, to establish together a sole country of their own.

For any change or cession of a territory, it is very requisite that the inhabitants be consulted about it, and that they give their open and genuine consent.

VIII. Several crowns ought *not* to continue upon the same head, and no people ought to be dependent, inwardly or outwardly, upon another people. Every form and degree of such dependence is in itself illegitimate.

IX. Fidelity to treaties is fully and irrevocably due, when they are not in manifest conflict with the eternal rules of what is righteous and just.

X. In framing general treaties, and such as are to reform the general law, the concurrence of all the States, which accept and observe it, is required. In particular and special treaties, all those whose interests are concerned should *de jure* concur. The vote of each of them is free, and equal, and absolute.

XI. Those peoples which are not recognised, and which are without any official representative, do, nevertheless, by the title of humanity and by virtue of the moral sentiment, possess an incontrovertible right to have their just complaints listened to, and their relief promoted, upon the terms prescribed by

the common liberty of the States, and by mutual justice between them.

XII. The State and the Church are quite separate in their functions and authority, though quite allied in their spirit, intentions, and zeal.

The Concordats should become no longer necessary. Ecclesiastical law must not exceed the bounds of the private right of the citizen.

We think it is enough to have put these two different series of doctrines in contrast with each other, for everybody to behold the situation in which Europe is really living at this day, between two diverse and opposite sorts of law; the one, which has fallen away, almost entirely, in general opinion and persuasion; the other, which is not yet well defined, and which is now rather desiderated than actually put in the way of a prompt and complete execution, although some beginnings of it may already be perceived, and our hopes of seeing the remainder are increasing. It is true that, since 1815, many changes and not a few catastrophes have occurred, which, having been excused and, as it were, amnestied by the Great Powers, have assumed the aspect of things good in law, and have found their way, as new clauses, among the old treaties, although they were in manifest conflict with the principles and maxims by which those treaties were inspired.

Hence arose the strange theory of the *fait accompli*, which is one less suitable to our modern civilization

than to those times which are Homerically styled the heroic ages ; inasmuch as it implies that, when you have plenty of force on your side, or when, in order to undo what you are doing, it would be needful to encounter serious perils and to endure some inconveniences, the Courts and Cabinets of Europe will be tractable and complaisant enough with you, and every act of yours will be deemed legal and irreprehensible. But woe unto you, if on the contrary they detect you in being feeble or unprepared, so that they can, with slight trouble, break through and defeat your enterprise ; for in that case, they will sharply reproach you for the principles you have violated, and you will obtain from them no pardon, whatever modesty and moderation you may observe in your appeals, in your claims, or in your resistance.

It has thus come to pass, that of late years, as many insurrections as Paris and France have made, as many forms of governments as they have tried, all these have quickly been approved and sanctioned by diplomacy. It has approved the expulsion of Charles X., and the enthronement of Louis Philippe. Then, it has approved the expulsion of him, and the proclamation of the Republic. Then again, the advent of Napoleon III. to the throne, against the express prohibition of those who assembled at Vienna. Notwithstanding all this, it presumes to hold, as yet subsisting, the dogma of the absolute sovereignty of princes, and that it is never allowable for their sub-

jects to depose them. So that wherever it has had to deal with the opposition of small or disorganized forces, as in Italy, in Hesse Cassel, in Hanover, and some other provinces, it has insisted upon everything going back immediately in obedience to these principles, so called and so upheld ; and a hope has been cherished that the world might forget the many defeats which these notions have undergone. But it is quite clear that the peoples have no longer any faith in them, or any reverence for them ; readily and joyfully beholding their contravention, whenever the greater force has passed over to the other side.

I certainly do believe that the European nations never before lived amid such a general and continuous disregard of the professed maxims and accepted rules of their law, as they do at present. For if we look at the history of the last century, and of the one preceding it, we do indeed come across very unjust and ferocious wars, with sundry flagrant and impudent usurpations ; but we do not find Europe, even in peaceable and regular times, belying herself in the fundamental maxims of her law, and silently permitting the universal conscience to alienate itself from the law, to blame, and reprobate it, daily more and more. Assuredly, none of those principles on which we have animadverted, and of which the Vienna Congress made, if not an explicit profession, a continual application and profit, had yet been cancelled, a century or two ago, in the general and vulgar

opinion of the peoples. But at this day, the very contrary may be affirmed of them ; and hence it arises that international law, interpreted in the fashion in which some royal and imperial chanceries persist in expounding it, appears like one huge falsehood, daily exposed before the sound judgment of all good and enlightened men.

We cannot deny, that since the monarchs in 1815 largely profited by their victory and conquests, against the invariable laws of the liberty and equality of nations, so now, even although the new principles were to be publicly confessed, and were every diplomatist to salute them, and were it proposed, in all future transactions, to observe them with the profoundest deference, still, without the interposition of some extreme, unexpected revolutions and changes, no small portion of the settlement of Europe will continue to differ from these principles, and will be kept under irregular and irrational conditions.

We have not failed, however, in care and diligence, to suggest all the honourable and pacific modes that are to be found of gradually reducing these unhappy discrepancies, and also of avoiding a much greater evil, namely, that of their being sanctioned and consecrated by the new international code. We therefore willingly abide by the discourse which we have proffered here upon this matter.

And now, as for what remains, although more than one of the greater potentates, instead of doing

homage to these great juridical verities which we have explained, and instead of choosing to draw the sword in desperate vindication of the contrary maxims, should resort to the weak and ungenerous course of retiring, and of yielding in the face of *faits accomplis* whenever these have force to help them, we believe that, without the lapse of much time, this movement will go on its way, just the same, by another path. It will only be requisite that the *faits accomplis* become so multiplied, as to convert that which had formerly the title and operation of a general rule, into an exception, and the exception into the rule.

We finish writing this book, having to-day before our eyes the spectacle of marvellous events, from the good success of which, as we may now hope, the law of nations will inevitably derive its speedy amendment and amplification. We have seen one formidable nation drawing its sword for the salvation of another, and for the gain only of a pure glory, such as no one else had yet obtained. We have seen torn up, and obliterated with blood, those conventions, which deserved the opprobrious name of personal and unequal conventions, which Austria had stipulated with the princes of Italy against the wishes and interests of their peoples. We have seen the principle of armed intervention abolished, apparently for ever, in those very provinces where it had been most licentiously exercised. We have seen, upon its overthrow, arising now vigorous, and henceforth incon-

testable, the idea of nationality, which triumphed among the Roumans yesterday, to-day among the Italians, and which later will awaken other races, each conscious of its community, and no more despairing of the attainment of its own proper destiny. In Central Italy, we see populations, unanimous, courageous, and orderly, denying the absolute prerogative of the princes, reinvesting themselves with their original and imprescriptible liberty; and after having, without offence or damage to anybody, annulled those governments which were upheld by foreigners, and which were devoid of the constituent moral unity, we see them gladly merging their own glorious and ancient autonomy in the greater and better selfrule of the whole nation. And in the meantime, we hear a certain voice, which at this day sounds amongst the most potent and influential in the world, solemnly reminding the monarchs that the seal of every political right is the open consent of the people; and that without this nothing legitimate can be effected, nothing fit to be registered in the new code of law which the nations desire.

So it appears, that the territorial and political reformation of Old Europe will soon come to approximate towards that rational order, which we have sought to define, and will range itself under the double control of nature and of universal conscience, beyond those strange artificial pens and barriers within which the poor human herds were at Vienna

so narrowly shut up, and so unwisely divided apart.

It does not seem that, either by chance, or by any popular excesses, or by the arrogance of any synod of monarchs, the admirable progress of these transactions is to be interrupted. But even if it should so happen, we may be sure that they will not long delay to resume their course, and to follow the direction in which they have set out, because their motives are truth, reason, and righteousness, with the constant forces of human nature, and the predestined order of the civilized world. Wherefore I say, that writers ought not for a moment to desist from their office of instructing, and of highly praising the efforts and the labour of those who are willingly, and at the same time patiently, co-operating to this end. If it appeared to Cornelius Tacitus, that those times are fortunate in which every man is allowed to think in his own way, and to write as he thinks, happier doubtless is our present age, when we may not merely publish our opinion, but may see that which we publish, in part at least, realized. In law, as Leibnitz has remarked, we may attain precision no less than in mathematics; the deductions from, and the application of, its principles proceeding as certain, direct, and inflexible, as in theorems of geometry; and they prove, through the work of time, a species of Fate in the social affairs of mankind, leading on those who are willing, dragging on those who are reluctant.

In this our century, by science and by the fair estimation of common opinion, liberty has been brought to take place of the unlimited sway of the monarchical power; and for the Government of Kings is substituted the Government of Nations. Therefore, within a greater or less time, the whole system must adapt itself to these new elements; and the war which is still prolonged against them may yet maintain some uncertain battles, but is most certain of a final defeat. We have described in earlier chapters how mighty and irresistible the *Holy Alliance* arose; by what causes it was exalted, by what causes it was for a long while maintained; then, in what manner it was dissolved, and how the spirit of its doctrines and the pertinacity of its defence and resistance have yet survived. We have also related how the phalanx, if we may so call it, of its principles and of its moral forces, has been for many years past beating a retreat, abandoning one province after another. Nor can it flatter itself with the expectation of obtaining the services of a Fabius who should, by dexterous manœuvring, restore its fortunes. At this very moment, we see many of its entrenchments, hitherto unimpaired, now forced and levelled with the ground; and I do surely think that its last discomfiture is about to be effected in the heart of Italy, where the destinies of the world have been more than once fought for and changed. And this is not without the sublime counsel of providence divine.

L'ENVOI.

Yes, truly said ! the counsel is divine
 Which shapes the growing stature of the world ;
 Making the brave and merciful combine,
 To smite False Empire, that it may be hurled
 Into the limbo of disabled lies :
 While fair and free, and quickly mustering
 Like stars at eve, or blossoms in the spring
 Starting to life, bright Principles arise,
 The genial daughters of the teeming Truth,
 Old thoughts of God, to Man fresh gifts of youth.

Go, honest Book ! deliberative page,
 Go forth to speed the virtue of the day !
 Fruit of the toil of an Italian sage,
 Presume to show our Englishmen thy way.
 I have but led thee to them, for I knew
 They kindly used the best I had to give.
 'Twas England "taught the nations how to live,"
 And Milton's spirit, in the noble few,
 Still rises from our soil, though London's mart
 Cloys with the dross of wealth the conscience and
 the heart.

" Oh holy knowledge, holy liberty !
 Oh holy rights of nations ! if I speak
 These bitter things against the jugglery

Of days that in your name proved blind and weak,
It is that tears are bitter." So did she,
Who looked at Florence on a murdered State,
Cry woman-like against our cruel prate
Of *Laissez-faire* the tortures of the free.
And I, because I am a Briton, I
Wept in that hour to see our genius die.

But thanks to God, who cherishes and saves
The public soul! we live and act again.
Now, strong and loud, the Mistress of the waves
Commands attempting despots to refrain.
"I will that ye shall *not* ; and if ye do,
There is, in multitude of minds and hands,
A latent force no sceptred wrong withstands ;
England shall bless this when it breaks on *you*."
So, by the moral sway of truth and right,
Perish their deadly works before the dawning Light.

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APPENDIX.

NOTE A.

PRECEDENTS, PRINCIPLE, AND PROPHECY.

Lord John Russell to Earl Cowley.

Foreign Office, November 15, 1859.

My LORD,—It may be useful, at the present moment, to recal to mind the conduct which Great Britain has pursued since the Peace of 1815, both when she passively abstained from, and when she actively participated in, European affairs.

In 1818, pretensions were put forward by some of the Great Powers to regulate and direct the internal affairs of all other countries.

In 1820, these pretensions were put in practice at the Congresses of Troppau and Laybach. A large Austrian army was sent to Naples, in order to change the internal government of the Two Sicilies; and 40,000 Austrian troops were stationed there, in order to suppress free institutions in that kingdom.

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In 1823, another interference was sanctioned by the Congress of Verona in the case of Spain, whose form of

internal government was not agreeable to the theories of the Great Powers.

The Duke of Wellington went to Verona, but remonstrated. Mr. Canning declared, that the principles laid down by the Allies struck at the root of the British Constitution.

Thus far, England did not concur, and protested. But in 1825, England acknowledged two or more of the Republics of South America ; and the Northern Powers, in their turn, protested.

In 1827, was signed the Treaty between Great Britain, France, and Russia, which led very speedily to the independence of Greece.

In 1830, Belgium rose against Holland, and Great Britain was active, both in the Cabinet and on the sea, in concerting the measures which led to the establishment of the independence of Belgium.

Thus, in these five instances, the policy of Great Britain appears to have been directed by a consistent principle. She uniformly withheld her consent to acts of intervention by force to alter the internal government of other nations ; she uniformly gave her countenance, and if necessary, her aid, to consolidate the *de facto* Governments which arose in Europe or in America.

There is every reason why we should pursue a similar course in regard to the affairs of Italy, namely, by withholding our assent to any measures for intervention by force to regulate the internal government of Italian States, and by using our influence to maintain and consolidate any regular and orderly governments which the Italians may form for themselves.

I am, &c.,

(Signed)

J. RUSSELL.

(*From Fraser's Magazine, December, 1859.*)

But the case of a people struggling against a foreign yoke, or against a native tyranny upheld by foreign arms, illustrates the reasons for non-intervention in an opposite way; for in this case, the reasons themselves do not exist. A people the most attached to freedom, the most capable of defending and of making a good use of free institutions, may be unable to contend successfully against the military strength of another nation much more powerful. To assist a people thus kept down, is not to disturb the balance of forces on which the permanent maintenance of freedom in a country depends, *but to redress that balance* when it is already unfairly and violently disturbed. The doctrine of non-intervention, to be a legitimate principle of morality, must be accepted by all governments. The despots must consent to be bound by it as well as the free States. Unless they do, the profession of it by free countries comes but to this miserable issue, that the wrong side may help the wrong, but the right must not help the right. *Intervention to enforce non-intervention is always rightful, always moral, if not always prudent.* Though it be a mistake to *give* freedom to a people who do not value the boon, it cannot but be right to insist that, if they do value it, they shall not be hindered from the pursuit of it by foreign coercion.

It might not have been right for England, even apart from the question of prudence, to have taken part with Hungary in its noble struggle against Austria; although the Austrian Government in Hungary was in some sense a foreign yoke. But when, the Hungarians having shown themselves likely to prevail in this struggle, the Russian despot interposed, and joining his force to that of Austria, delivered back the Hungarians, bound hand and foot, to their exasperated oppressors, it would have been an honourable

and virtuous act on the part of England to have declared that this should not be, and that if Russia gave assistance to the wrong side, England would aid the right. It might not have been consistent with the regard which every nation is bound to pay to its own safety, for England to have taken up this position single-handed. But England and France together could have done it ; and if they had, the Russian armed intervention would never have taken place, or would have been disastrous to Russia alone ; while all that those Powers gained by not doing it, was that they had to fight Russia five years afterwards, under more difficult circumstances, and without Hungary for an ally.

The first nation which, being powerful enough to make its voice effectual, has the spirit and courage to say, *that not a gun shall be fired in Europe by the soldiers of one Power against the revolted subjects of another*, will be the idol of the friends of freedom throughout Europe. That declaration alone will ensure the almost immediate emancipation of every people which desires liberty sufficiently to be capable of maintaining it ; and the nation which gives the word will soon find itself at the head of an alliance of free peoples, so strong as to defy the efforts of any number of confederated despots to bring it down. The prize is too glorious not to be snatched sooner or later by some free country ; and the time may not be far distant when England, if she does not take this heroic part because of its heroism, will be compelled to take it from consideration for her own safety.

JOHN STUART MILL.

It is rather a descent from this glowing prediction of a pure and bold thinker of our own, to the coldly impartial opinion even of so estimable a French *doctrinaire* as M. St. Marc Girardin ; but the following extract from

an article of his, in the *Journal des Débats* of January 20th, may assist reflection upon the general argument of this book, or serve, at any rate, to show, in the opinion of the weather-wise, which way the wind blows :—

“ Piedmont has declared, that she would maintain, before the European Congress, the right of the populations of Central Italy to choose their own government. This is the present situation of things. But it is important that we should rightly estimate the character of the new law, upon which the Congress, if it had been enabled to assemble, would have had to deliberate, and which tends to become nothing less than the New Public Law of Europe.

“ This law by no means resembles the old public law. It is not the old law of conquest, nor is it the law founded upon European treaties, which awarded this or that country, this or that population, to this or that prince. Conquest and inheritance, recognised and consecrated by treaties, have composed the general principle of the law of sovereignty in Europe; and upon this principle, the different States of Europe were founded by the Congress of Vienna. But since that treaty, another law has gradually become accredited; the law of national sovereignty, that is to say, the right which a people has to change its own government, at its own pleasure, without the other peoples meddling in it.” He goes on to cite the instances of the French Revolution of 1830, and of the European acknowledgment of the same principle in Belgium and in Greece; then he says, “ But this principle has nowhere obtained greater ascendancy, or, hitherto, greater success, than in Italy. It is in the name of this principle that the late war has been made; and when, by the treaty of Villafranca, this principle appeared for an instant to suffer an eclipse, it was taken up again by Italy herself, on her own account; and she

has made it prevail at Parma, at Modena, at Florence, and in the Roman Legations, with various differences of application, but with a singular unity of purpose.

“ We do not care to mark these differences in its application. They may be used, more or less, to dispute the sincerity of these acts of national sovereignty, but that which is incontestable, is the principle of the sovereignty itself. All that has been done in Central Italy has been done in the name of this sovereignty ; which would make its appearance now before the Congress, if the Congress were to take place, not like an accused party, as it was wont to appear at the former Congresses—for example, at Verona—but like a victorious power, esteeming itself as highly legitimate. It would have, for its defenders, firstly, Piedmont, which at this moment owes the possession of Lombardy to the old public law of Europe—that is, to the tenure of conquest and of treaties ; but which asks for nothing better than to be indebted, for Central Italy, to the new public law—that is to say, the principle of national sovereignty ; secondly, it would have England, which finds it advantageous to promote by diplomacy the triumph of that principle for which *we* have gained a military triumph ; and lastly, it would have France, which cannot, without being inconsistent, overthrow in the Congress that which she has raised up in the battle-field. If there is to be a Congress, then, the principle of national sovereignty will prevail there. It is the greatest revolution that could be effected in European public law. We applaud such a revolution with all our heart.

“ But this principle of nationality is, by its very nature, independent of any Congress. If we attentively study the conduct of the populations of Central Italy, we shall at once comprehend, that those populations have, by themselves, and for themselves, done all that there was to do.

They had nothing to expect from the Congress, but its assent to all that which they had done ; whilst, if the Congress refused that assent, its refusal could not invalidate their right ; and if that assent were granted, it could not augment their right. . . . It is not from such a recognition or registration in Congress, that the legitimacy of this principle of national sovereignty would have proceeded ; but its force is inherent in itself, and does not require any legalization."

NOTE B.

THE EMPEROR NAPOLEON, OR EMPEROR OF THE FRENCH.

I feel bound to restore, here at least, that final sentence, or personal appeal on behalf of Italy, which I have taken the liberty of removing from the author's text. And I beg leave to say, that I removed it not in deference to a vulgar and inconsiderate animosity, which hereafter the severe judgment of History, on carefully reviewing the facts of our time, will refuse to justify ; but simply because it appeared superfluous to retain, in preparing an edition of this Treatise for the English people, a valedictory sentence, by which its lessons had been specially commended to the Emperor of the French. We can understand how the Italian author, in publishing, at a critical moment last year, his views of the rightful independence of the European nations, when his own nation was struggling for its existence, may have felt anxious to claim the presumed assent of a mighty Imperial statesman at the head of a victorious army.

"Vuolsi così colà, dove si puote
Ciò che si vuole."

We can also imagine how, with the rapturous shouts of

delivered Lombardy in his ears, one who had mourned and laboured, for nigh half a century, to get rid of the Austrian bondage, may have felt grateful to the enterprising ruler of an allied nation, by whose indispensable military aid *that much*, at any rate, of the pined-for liberty of the Peninsula had at length been won.

"The leader and the life of these great events, to-day, is the nephew of him, by whom the most perfect Code that human wisdom has yet been able to produce, was promulgated in Europe; and these two great personages derive their origin from that nation of men wearing the *toga*, to whom belonged the function of devising the best laws in the ancient world, and of communicating them to all peoples, except the utterly barbarous; that nation, whose it was to moderate the rage of wars and victories, *pacisque imponere morem*, and in whose mind, with an enlightening splendour, beamed the eternal Rule of Law."

So much for the Italian, if not exactly Roman, House of Buonaparte; and I dare say Count Mamiani, who in 1831 saw Prince Louis Napoleon and his brother actively engaged in the insurrection of Romagna, believed that the Emperor of the French was not forgetful of his Italian descent. In those provinces of the Peninsula, which formed part of the promising kingdom of Italy established by Napoleon I., there has lingered, ever since the return of Papal and Austrian oppression in 1814, by no means an unfavourable impression of his conduct and ultimate intentions—a very different feeling from that which perhaps existed in some other Italian provinces, which he swallowed up in his French Empire more rudely. It is a fact, however, the causes of which we have no leisure to discuss, that a large portion of the Italian people have never regarded either the first or the third Napoleon as the necessary enemies of their country: but rather as the pledged and predestined agents of a great European

transaction, an opportunity from which the restoration of Italy was by the virtue of her own sons to arise. I do not pretend to comment upon the reasonableness of this popular notion ; but it did always more or less exist, and the dramatic incident of Orsini's last letter must be referred to some such persuasion as this. Certainly, it has not been universally prevalent ; for besides the Republican faction, all those who erroneously ascribed the expedition against Rome in 1849 to the President, though *he*, even before his election, had publicly disapproved it, and all those who were more scandalized by the strategical maintenance of a French Papal body-guard in the "Eternal City," than by the Austrian total possession of the Legations, refused to put confidence in a policy which needed such a ten years' ripening, and clamorously denounced Napoleon III. as one of their national foes. Again, I do not seek to criticise these various Italian opinions ; but our readers can hardly, without taking them into account, appreciate the passage I have transferred to this note. The interests of Italy, on several important occasions, have been postponed by both Napoleons to French objects, and also to their personal and dynastic objects, no doubt ; in other cases, and notably at Villafranca last July, those interests have been grossly misapprehended. But it is hard to perceive that they have as yet been wantonly and deliberately betrayed. If the nerve of an unpractised warrior, and, I should think, not a cruel or unfeeling man, failed him somewhat after the sickening slaughter he had witnessed on the sultry field of Solferino, then we may perhaps ascribe to this lassitude, and to the effect of an excited imagination, which exaggerated the impending difficulties, his unfortunate error in the patching up of an absurd compromise, or confederation scheme. But in this instance, as we have seen in others, having committed a blunder, he does not lack the moral courage to avow and to amend it. And

we may trust that he will soon put an end, for ever, to that bad intervention of the Catholic Powers in the civil affairs of Rome, the pretension to meddle in which has been traditional ever since, and indeed since long before, the age when Charles V. contended with Francis I. and our Henry VIII. for the custody of a captive Pope. We shall see this ; and whether the Elect of France will respect the election of Tuscany.

Having said this much impartially on behalf of a very important political person, whose acts do not always get fair play among us, I should like to be allowed to add, that I would not seem an apologist of the French Empire. The whole sense and spirit of England rightly dislikes it. Though it is no business of ours, we may yet, as contemporary observers, pronounce that political system most unsound and undesirable. Not much better, and probably just as brief, have been all the other systems of French government in our own and our fathers' time. But the stream was fouled higher up. If parliamentary constitutions, without which, in the great rich nations of modern Europe, no liberty and no public life can long be enjoyed, have not thriven in France, we Englishmen should know the reason why. A fatal impatience of all class privileges and social distinctions, a still more fatal administrative centralization, have there destroyed the stout and vigorous materials of self-sustaining freedom. We may thank our independent and influential body of English noblemen and gentlemen, we may thank our wealthy civic and mercantile republican corporations, for the stuff of which our political happiness is made. When there has been in England a monarch to be rebuked, we have found our Hampdens in the rural manor-house, and our Beckfords in Guildhall. Let us then, with a true comparison of the two countries, read the history of France, ever since the insidious arts of Richelieu began, and we shall not speak too contemptuously of the present generation of our neighbours across

the Channel. Most earnestly, I say, do we wish them something better than the Empire as it is. We sadly want to be cheered once more by the brilliant intelligence, and helped by the popular example of France in the common task of the world's civilization; for when France mopes, all Europe is dull. But if there be any truth in the principles of this book, the equity and comity of nations enjoin upon *us* to respect the official character of that ruler whom either a foreign nation has elected, or in whose assumption of authority it has somehow acquiesced. We know very well, and probably Napoleon III. would be forward very frankly to confess, that if it pleased the magnanimous French people to do so, they would toss his enthroned dictatorship into the air, as easily as they have tossed away every other dynasty. Meantime, we have had no cause to say that he is our enemy, or the enemy of Europe. With the internal situation of France we nationally have nothing to do. But we see that he takes lessons in non-intervention from Lord John Russell, and from Mr. Cobden lessons in free-trade. We see that he represses the encroachments of the Vatican and of the Jesuits, fearless of the dagger of fanaticism, by which the famous Henri Quatre was slain. These are matters of general European concern. And as yet, the Emperor Napoleon has *not* proved so troublesome to the weaker States, as each, in turn, of his predecessors had been. The Bourbons whom we, joining our arms with those of the Cossacks and Blucher, violently and wrongfully reimposed on an indignant nation, soon sent their army to put down constitutional liberty in Spain. The Orleans government, which we had befriended, moved Egypt to break up the Ottoman Empire, and intrigued in the bride-chambers of the Spanish princesses for the probable succession to a crown which, for a century and a half, it was the object of British policy to keep from the ambition of the Tuileries. Does Lord Palmerston, who knows and cares for English

interests, find them more endangered by the present, than by some of the former French governments? Why, even the annexation of Savoy was promised to French vanity by the pious humanist Lamartine. Let us be just, then, to the actual conduct of the Imperial *régime*, though we must profoundly disapprove of all despotism in the abstract. I would not see my own countrymen, however, lulled into a slack and false security. We should give no offence, but be ready to resist any. Our glorious Press, without adulation and without insolence, should watch the strange career of a Napoleon III., ever abiding steadfastly,

"Vergin di servo encomio
E di codardo oltraggio,"

as, watching the meteoric rise and fall of Napoleon I., steadfastly dwelt the lofty muse of Manzoni. We should never give way to those periodical fits of rage and panic, which are so unworthy of the land that has been ruled by women like Elizabeth and by men like Cromwell. Necessity for keeping up our arsenals and our navy? Why, if we had a moral certainty that no existing Power would ever attack us, we should not put off our trusty armour; to be strong is to be free. The Rifle Volunteers? It is the duty, the privilege, and the pride of an honourable citizen to handle his weapons, consecrated to the public service. Taxation for the National Defences? Bah! do we boast of our incomparable liberties, and grudge tenpence in the pound that we may guard them?

If these remarks go beyond the occasion of this note, they may be admitted because, in a book of foreign politics, I do not wish to shirk discussing the greatest Continental fact of our day, namely, the Emperor of the French. Besides, I hold it is a duty, when unscrupulous faction is craftily fomenting those accursed jealousies which have produced so many deeds of madness in past

times, for us to answer with kindness and candour every invitation to improve our relations with France. It was Sir Philip Sidney who called her "that sweet enemy" of ours; and though, in our cooler age, there might be found some affectation in such a phrase, it breathes a chivalrous courtesy that is ever becoming in the two noblest modern States. Pleasant, clever, gallant France, emulous but not malicious in peace or in war; beloved by us, after all, more than picturesque and melodious Italy, more than learned Germany with the wondrous dreams of her insatiable thought,—France, our nearest and worthiest companion through the ways of the world's history, shall be reviled no more; but we shall accept Mr. Gladstone's bidding to pour out, for the humblest English table, the blushing vintage of sunny Burgundy, that we may greet our neighbours with some such toast as this: *Vive la France! Soit chacun de son pays; toutefois, Messieurs au-delà de la Manche, buvons, les uns et les autres, à l'amitié des peuples!*

NOTE C.

VOLUNTARY SEPARATION OF PROVINCES.

There is, in the author's third chapter, a reference to his treatise, before published, "*Dell' Ottima Congregazione Umana, e del Principio di Nazionalità.*" It is one chapter, I believe, extracted from an extensive work still in MS., on the "*Principles of Social Science.*" This special treatise on Nationality, or rather on the true and spontaneous Congregation of a People, which is the fundamental idea of Mamiani's political philosophy, was reprinted in the Italian as an Appendix to the present book on the *Law of Nations*. Although it is highly interesting and

valuable in a scientific point of view, I have thought the more popular explanations he gives in the earliest chapters of this volume were sufficiently complete without its aid. It contains, indeed, some applications of his argument to the particular case of a colony becoming adult and requiring its independence ; and also to the case of a civilized State exercising its dominion over barbarous peoples ; which could not fail to concern the historical character of the British Empire, with its colonial and Indian provinces ; but since the proper theme of the book I have translated is *European Law*, it has seemed to me that I should not here ask our readers to pursue the inquiry farther. Mr. John Stuart Mill has lately pointed out, by the way, that the rules of international obligation, which obtain between one civilized people and another, are essentially inapplicable to the relations between a civilized people and barbarians. It is, however, unnecessary to discuss these exceptions just now, whilst our view is directed to the practical questions of the day immediately before us in the affairs of Italy. The following passage, on the Voluntary Separation of Provinces, may, perhaps, be found applicable, in the first part, to the question of Savoy ; but perhaps not. The parliament of the whole Kingdom, and the people of Savoy, shall decide.

“Are there any other exceptions to the principles above set forth ? The ideal of absolute justice, viewed through speculative propositions, appears clear and entire ; but no sooner is it referred to the facts of human experience than it seems to be subjected to contingencies and limitations ; and it may therefore not be unseasonable to inquire, whether it can ever occur to a people rightfully to sever the sacred bond by which it is united to the common country (in cases other than that of a colony which we have already defined.)

“Nobody will hesitate to believe, that the consent of all is, as it were, legal and almost competent to loosen or to alter the political tie which binds each province to the body of the nation ; because their common assent takes away at once the loss and the wrong ; and it is, indeed, in this unanimity that we have discerned the legitimate foundation of colonies.

“Supposing, then, to quote a modern instance, that the Girondins, who were Federalists, had resolved to loosen the strict political unity of their nation, by the consent and assent of all, no fault, except perhaps that of its imprudence, could have attached to their scheme. But in the contrary case, their fault would be enormous, and such as to bring them justly under an indictment for *lèse majesté*.

“In addition to this, it appears to us that, wherever some parts of a nation were dominating over the others, in such a manner that not only their community of laws, and their constant reciprocity of benefits, were interrupted, but even that some one of the essential and fundamental rights of humanity was violated and destroyed ; and where no other redress or defence could be found than by separating from the common country, dismemberment would, in such an extremity, be lawful, and might lawfully be obtained even by force. For example, this supposition was once verified in the situation of the peoples of Languedoc and Gascony, when, if they would remain united to France, they had but the choice of either blaspheming the religion which they professed, or dying by the gallows and the stake. And who could have denied the same right to the unhappy Irish, in those days when England was not ashamed to persist in deeds, which were directly contrary to her principles ? Still, even in that severe necessity, the people which thus lops itself off from the august body of the nation ought to preserve a firm intention to rejoin it, whenever the persecution should cease.

The reason of all this is, that men unite together, and form a *patria*, in order to fulfil their social ends, and to protect well their inherent rights ; not *vice versa*, nor do they possess these rights and seek those ends, in order to establish and to serve a *patria*. And the whole of Italy ought, therefore, to render public thanks to the Waldenses, because they never would or could detest and renounce their ancient mother country, until the glorious day when their constancy was crowned by God with its due reward, and when they were reconciled with their reformed persecutors by a common compact of liberty."

NOTE D.

ENGLISH POETS AND ITALIAN POLITICS.

"So did she,
Who looked, at Florence, on a murdered State."

This allusion of mine is to the gifted and generous English lady who saw from "Casa Guidi Windows," in the disastrous year 1849, the forsworn Grand Duke Leopold II., after he had purposely quitted his people, by an arrangement secretly pre-concerted with Radetzky, in order to provide an excuse for this Austrian invasion, returning into the city. He returned with a hostile army, which occupied Tuscany for six dreary years afterwards, to enable him to break the laws and constitutional liberties, and almost break the heart of his gentle people. If that be not the murdering of a State, I cannot tell what is. The distinct autonomy of Tuscany lay dead from that day to this, never, in its old historical form, to revive. Happily, as we now see, merged in the greater and glorious form of the new Italian kingdom, the victim enjoys a resurrection ; and the murderers, where are they ? Ask my Lord Normanby, among British peers the officious

representative of discarded courts, and the apologist of princely traitors deservedly punished!

I am glad of this opportunity, after so many years, to express the cordial admiration, which I share with every lover of literature, and with every lover of liberty, for one of the noblest political poems ever composed in any language. The Italians owe a great deal of gratitude to Mrs. Browning, and to another English resident at Florence, Mr. Trollope, for the high services which they have rendered to the national cause, awakening, *she*, with the spell of inspired genius, and he, with his eloquence and graphic power, the sympathies of a cultivated class of minds at home. I think their readers here feel gratitude enough. It is something to thank an author for, when she gives us the enjoyment of the richest poetical imagery, and of a magnificent allusive rhetoric, surpassed by none, excepting Byron, in that kind. It is much more, that she gives us the sacred pleasure of feeling her own genuine ardour for *the right*, her passionate hatred of injustice, and her more than womanly tenderness for the griefs and errors of suffering humanity. "Before the Congress," therefore, is eagerly expected by us to-day.

Poetry thrives well, after all, in immediate contact with the real strife and life of the world, on those great dramatic occasions which make every fibre of the popular heart thrill with the awful hopes and fears of an enthusiastic public endeavour. Revolutions in the State, if justly and bravely attempted, may, though unsuccessful, exhibit the nearest actual approach to an ideal excellence in some of the highest virtues of man. If still waiting their opportunity, there is an inexhaustible theme of poetic meditation in the stored-up traditions of national regret, resentment, and purpose of conflict, in the pride of a former prosperity, and the intention to regain a long-lost independence. Byron, with his strong, manly nature,

found this interest in unhappy Venice. It is no *dilettante* preference, no affected sentimentalism, that has led several of our own poets to occupy themselves with the fate of Italy. A certain politician, one of more than feline stealth, and spite, and plausibility, who long ago sold himself to become the tricky agent of a stolid, reckless, and incapable party, once in the House of Commons remarked, with a sneer, that "the Italian question was the poetry of politics." Perhaps it is so, and it is practical nevertheless. However, there are none so pledged and bound, by all their habitual tastes and pursuits, to concern themselves with this Italian emergency, as those who are occupied with the custody and continuation of English literature; for we know it is from Italy that our ancestors derived the consummate art of its richest seasons. Not that the prime masters of our native thought and language ever exchanged their original for any foreign strain; Chaucer, Spenser, Shakspeare, and Milton, were tolerably good Englishmen; yet which of them had not steeped his mind in the graces of Italy?

NOTE E.

THE AUTHOR'S ADDRESS TO THE PEOPLE OF THE TWO SICILIES.

The original publication of this Treatise was accompanied by Count Mamiani with the following dedicatory Address, "To the People of the Two Sicilies."

I feel it is presumptuous for me to dedicate to you, a People so great by your memories and by your misfortunes, this little volume of mine. But in the obscure and inactive life that I am leading, I possess nothing but the use of my pen by which I can show you the love, the high and constant affection that has bound me to you ever

since I began to love Italy, and that is, from the earliest exercise of my reason. And besides, if the book which I present to you bears no proportion to the loftiness and celebrity of your own history and its great names, its matter is yet very pertinent to the ill fortune with which you have so long been afflicted. For here I prove, and as it seems to me, very clearly, that the light of justice and of liberty is growing and spreading among men, more rapidly than its adversaries would have it ; and that in our own days, the law of nations has been advanced more than it had been in several centuries before.

Yet I do not, therefore, presume to come before you in the garb and with the voice of an admonisher and comforter. For such an office, if it were needed by you, quite another vein of eloquence than mine, another personal authority, are demanded. I only indulge the hope, that my Essay may afford you a fresh occasion to extend your mental glance beyond your own provinces, and to look at what is happening in the rest of the Peninsula, and what is maturing itself in the destinies of the civilized world. And I would have you laugh at those, who think to sever you from Europe, and yet more, from Italy, our common native land ; those who now, when the Great Wall of China has been broken through with a hundred gaps, expect to convert the southern portion of the *bel paese* into a little "Celestial Empire."

Revive again then, bold and persevering, to liberty and to glory, taking pattern and counsel from your fellow-citizens of Upper and Central Italy, who, although to-day they precede you in some exercises of public virtue and of military valour, are, nevertheless, daily more persuaded, that in you alone abides the power to complete, and to make for ever secure, the troublesome work of their resurrection and of our common independence. You see, then, to what a sublime enterprise you are appointed ;

internal government was not agreeable to the theories of the Great Powers.

The Duke of Wellington went to Verona, but remonstrated. Mr. Canning declared, that the principles laid down by the Allies struck at the root of the British Constitution.

Thus far, England did not concur, and protested. But in 1825, England acknowledged two or more of the Republics of South America ; and the Northern Powers, in their turn, protested.

In 1827, was signed the Treaty between Great Britain, France, and Russia, which led very speedily to the independence of Greece.

In 1830, Belgium rose against Holland, and Great Britain was active, both in the Cabinet and on the sea, in concerting the measures which led to the establishment of the independence of Belgium.

Thus, in these five instances, the policy of Great Britain appears to have been directed by a consistent principle. She uniformly withheld her consent to acts of intervention by force to alter the internal government of other nations ; she uniformly gave her countenance, and if necessary, her aid, to consolidate the *de facto* Governments which arose in Europe or in America.

There is every reason why we should pursue a similar course in regard to the affairs of Italy, namely, by withholding our assent to any measures for intervention by force to regulate the internal government of Italian States, and by using our influence to maintain and consolidate any regular and orderly governments which the Italians may form for themselves.

I am, &c.,

(Signed)

J. RUSSELL.

(*From Fraser's Magazine, December, 1859.*)

But the case of a people struggling against a foreign yoke, or against a native tyranny upheld by foreign arms, illustrates the reasons for non-intervention in an opposite way; for in this case, the reasons themselves do not exist. A people the most attached to freedom, the most capable of defending and of making a good use of free institutions, may be unable to contend successfully against the military strength of another nation much more powerful. To assist a people thus kept down, is not to disturb the balance of forces on which the permanent maintenance of freedom in a country depends, *but to redress that balance* when it is already unfairly and violently disturbed. The doctrine of non-intervention, to be a legitimate principle of morality, must be accepted by all governments. The despots must consent to be bound by it as well as the free States. Unless they do, the profession of it by free countries comes but to this miserable issue, that the wrong side may help the wrong, but the right must not help the right. *Intervention to enforce non-intervention is always rightful, always moral, if not always prudent.* Though it be a mistake to *give* freedom to a people who do not value the boon, it cannot but be right to insist that, if they do value it, they shall not be hindered from the pursuit of it by foreign coercion.

It might not have been right for England, even apart from the question of prudence, to have taken part with Hungary in its noble struggle against Austria; although the Austrian Government in Hungary was in some sense a foreign yoke. But when, the Hungarians having shown themselves likely to prevail in this struggle, the Russian despot interposed, and joining his force to that of Austria, delivered back the Hungarians, bound hand and foot, to their exasperated oppressors, it would have been an honourable

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